

(23,078)

**SUPREME COURT OF THE UNITED STATES.**

**OCTOBER TERM, 1913.**

**No. 204.**

**VICENTA MONTOYA AND THE UNKNOWN HEIRS OF  
FRANCISCO MONTES VIGIL, DECEASED, ET AL., AP-  
PELLANTS,**

**vs.**

**CANDIDO G. GONZALES ET AL.**

**APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF  
NEW MEXICO.**

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1 Be It Remembered, that heretofore, on to-wit on the twenty-first day of March, A. D., 1910, there was filed in the office of the Clerk of the Supreme Court of the Territory of New Mexico, a transcript of record in a certain cause therein pending, entitled Vicenta Montoya, Plaintiff vs. Unknown Heirs of Francisco Montes Vigil, deceased, et al., defendants, Appellants, vs. Candido G. Gonzales, et al., Interveners and Appellees, which said transcript or record was and is in the following words and figures to-wit:

2 Be It Remembered, that heretofore, on to-wit, the 12th day of June, 1906, there was filed in the office of the Clerk of the District Court of the County of Bernalillo, Territory of New Mexico, a complaint in a certain cause wherein Vicenta Montoya was plaintiff and the Unknown Heirs of Francisco Montes Vigil, deceased, the Unknown Heirs of Juan Gonzales, deceased, and all Unknown Owners of the real estate described in said complaint, were defendants, and summons was issued in said cause; which said complaint is in the words and figures following, to-wit:

In the District Court of the County of Bernalillo, Territory of New Mexico.

No. 7126.

VICENTA MONTOYA, Plaintiff,

VS.

THE UNKNOWN HEIRS OF FRANCISCO MONTES VIGIL, Deceased;  
The Unknown Heirs of Juan Gonzales, Deceased, and All Unknown Owners of the Real Estate Hereinafter Described, Defendants.

*Complaint.*

The plaintiff complains of the defendants and alleges:

(1) That the plaintiff, together with the defendants other than the unknown heirs of Francisco Montes Vigil, deceased, are the owners and possess as tenants in common the following described real estate, situate in the counties of Bernalillo and Sandoval, Territory of New Mexico.

3 A tract of land known as "the Alameda Land Grant," bounded on the north by the ruins of an old pueblo, on the south a small hill which was the boundary of Luis Garcia, on the east the Rio Del Norte as it ran in the year 1710 near the eastern foothills, and on the west a prairie and hills, and containing, according to the official survey thereof, 89,343 acres of land, as will more fully appear from the record of said survey on file in the office of the Surveyor General of New Mexico, reference to which is made for more particular description.

(2) Plaintiff further alleges that on the 2nd day of January,

1710, the Marquez de la Panuela, by authority of the King of Spain, and in accordance with the royal laws, usages and customs of Spain, in force and effect in the then province of New Mexico, granted the above described tract of land to Francisco Montes Vigil in consideration of and as a reward for military services, and that juridical possession of said tract of land was on the 27th day of January, 1710, duly given to said grantee.

(3) That the said grantee, Francisco Montes Vigil, afterwards on the 18th day of July, 1712, conveyed the said tract of land to Captain Juan Gonzales, and that the said grant and said conveyance was afterwards, on the 18th day of September, 1713, duly presented by said Captain Juan Gonzales to Juan Ysidro Flores Mogollon, the then Governor and Captain General of the then province of New Mexico, which said grant and the transfer thereof to the said Juan Gonzales was thereupon duly approved by the said Governor and Captain General.

(4) That afterwards in a suit regularly brought and pending in the United States Court of Private Land Claims at Santa Fe in the Territory of New Mexico, wherein Alejandro Sandoval, et al., were plaintiffs and the United States was defendant, at the November term thereof, 1892, by decree of court duly made and entered, the said grant of said tract of land was duly confirmed to the heirs, assigns and legal representatives of said Francisco Montes Vigil and his grantee, Captain Juan Gonzales, as will more fully appear from a copy of said decree filed herein.

(5) Plaintiff further alleges that the said plaintiff and the defendants other than the unknown heirs of Francisco Montes Vigil, are the owners of said tract of land as tenants in common, except that some of the heirs of said Juan Gonzales or their ancestors may have conveyed undivided interests in said premises, and the plaintiff alleges that owing to the large number of heirs of the said Juan Gonzales, deceased, and the uncertainty as to what heirs have parted with their title to said tract of land and as to what person or persons have purchased interests therein, if any, it is impossible to allege the names of plaintiff's co-owners or the exact interest owned by the several plaintiffs and defendants, or the names or whereabouts of said unknown heirs or said unknown owners.

(6) Plaintiff further alleges that a portion of said tract of land in the Rio Grande Valley lying east of the foothills and below the irrigating ditches is occupied by various persons and claimed in severalty by reason of original allotments or by adverse possession, the amount of which said land so occupied and the names of the persons claiming to own said lands in severalty and the description of the land so occupied are to plaintiff unknown.

Plaintiff further asks that partition hereinafter prayed for be made subject to the rights of said occupants in severalty.

Plaintiff further alleges that all of the lands lying west of the irrigating ditches and foothills, and also a portion of the lands lying east of said irrigating ditches and foothills in the Rio Grande Valley, are held and occupied by said plaintiff and the defendants

other than the unknown heirs of Francisco Montes Vigil, as tenants in common.

(7) Plaintiff further alleges upon information and belief that the unknown heirs of Francisco Montes Vigil claim some right, title or interest in and to said real estate, but plaintiff alleges that their ancestor, Francisco Montes Vigil, conveyed all of his right, title and interest in and to said premises to Captain Juan Gonzales, and that the said unknown heirs of Francisco Montes Vigil have no right, title, interest, claim or demand in or to said premises.

Wherefore plaintiff prays partition of said premises according to the rights of the several parties hereto; that the above named defendants and each of them be required to come in and set up or prove their respective interests in and to said premises or be forever barred, and if partition cannot be made without material injury to the rights of the respective owners of said premises, then for a sale of said premises and a division of the proceeds between the parties according to their respective rights after the payment of the costs of this action, and for all such relief as the parties may be entitled to in law or in equity.

McMILLEN & RAYNOLDS,  
*Attorneys for Plaintiff.*

6 Endorsed: "Filed in my office this June 12, 1906. W. E. Dame, Clerk."

And Thereafter, on to-wit, the 15th day of June, 1906, there was filed in the office of the clerk of said court, in said cause, an Affidavit for Publication; which said affidavit is in the words and figures following, to-wit:

In the District Court of the County of Bernalillo, Territory of New Mexico.

No. 7126.

VICENTA MONTOYA, Plaintiff,

vs.

THE UNKNOWN HEIRS OF FRANCISCO MONTES VIGIL, Deceased;  
The Unknown Heirs of Juan Gonzales, Deceased, and All Unknown Owners of the Real Estate Hereinafter Described, Defendants.

*Affidavit for Publication.*

TERRITORY OF — MEXICO,  
County of Santa Fe, ss:

Vicenta Montoya being by me first duly sworn says that she is the above named plaintiff; that the names, places of residence and whereabouts of the above named defendants "The unknown heirs of Francisco Montes Vigil, deceased," "the unknown heirs of Juan

Gonzales, deceased," and "All Unknown owners of the real estate described in plaintiff's complaint" are to said affiant unknown.

VICENTA MONTOYA.

7 Subscribed and sworn to before me this 14th day of June,  
A. D. 1906.  
[NOTARIAL SEAL.]

AMADO CHAVES,  
Notary Public.

Endorsed: "Filed in my office this June 15, 1906. W. E. Dams,  
Clerk."

And Thereafter, on to-wit, the 6th day of August, 1906, there was filed in the office of the clerk of said court in said cause, legal notice and proof of publication of same; which said notice and proof of publication are in the words and figures following; to-wit:

*Legal Notice.*

In the District Court of the County of Bernalillo, Territory of New Mexico.

No. 7126.

VICENTA MONTOYA, Plaintiff,

VS.

THE UNKNOWN HEIRS OF FRANCISCO MONTES VIGIL, Deceased;  
The Unknown Heirs of Juan Gonzales, Deceased, and All Unknown Owners of the Real Estate Hereinafter Described, Defendants.

You, the above named defendants, and each of you, are hereby notified that the above named plaintiff has commenced her action against you in the above named court, being cause No. 7126, on the docket of said court; that the general object of said action is to secure the partition of the real estate hereinafter described according to the rights of the several owners thereof, and require you and each of you to come in and set up or prove their respective interests in and to said premises or be forever barred, and in case partition of said premises can not be had without material injury to the interests of the respective owners, then for a sale of said premises and division of the proceeds thereof between the parties according to their respective rights, and for all proper relief in equity.

Said real estate is situate in the counties of Bernalillo and Sandoval, Territory of New Mexico, and described as follows, to-wit:

A tract of land known as "The Alameda Land Grant," bounded on the north by ruins of an old pueblo, on the south a small hill which was the boundary of Luis Garcia, on the east the Rio del Norte as it ran in the year 1710 near the eastern foot hills, and on the west a prairie and hills, and containing according to the official

survey thereof 89,346 acres of land, as will more fully appear from the record of said survey on file in the office of the Surveyor General of New Mexico, reference to which is made for more particular description.

You are hereby notified that the plaintiff's attorneys are McMillen and Raynolds, whose postoffice address is Albuquerque, New Mexico, and that unless you and each of you enter your appearance in said cause on or before the 4th day of August 1906, judgment will be rendered against you and each of you by default.

[SEAL.]

W. E. DAME,  
*Clerk of the District Court.*

*Affidavit of Publication.*

TERRITORY OF NEW MEXICO,  
*County of Bernalillo, ss:*

9 W. T. McCreight, being duly sworn, declares and says that he is Business Manager of the Albuquerque Weekly Citizen, a newspaper published and having a general circulation in the City of Albuquerque and County of Bernalillo and Territory of New Mexico; that the publication, a copy of which is hereto attached, was published in said paper, in the regular and entire issue of every number of the paper during the period and time of publication, and that the notice was published in the newspaper proper and not in a supplement, for four times, consecutively, the first publication being on the 23rd day of June, 1906, and the last publication on the 14th day of July, 1906.

(Signed)

W. T. McCREIGHT,  
*Business Manager.*

Sworn and subscribed to before me, a Notary Public in and for the County of Bernalillo and Territory of New Mexico, this 4th day of August, 1906.

(Signed)

THOS. K. D. MADDISON,  
*Notary Public.*

Costs publication, \$15.50.

Endorsed: "Filed in my office this Aug. 6, 1906. W. E. Dame, Clerk."

And thereafter, on to-wit, the 21st day of September, 1907, there was filed in the office of the clerk of said court, in said cause, Additional Proof of Publication; which said Additional Proof of Publication is in the words and figures following; to-wit:



10 In the District Court of the County of Bernalillo, Territory of  
of New Mexico.

No. 7126.

VICENTA MONTOYA, Plaintiff,

VS.

UNKNOWN HEIRS OF FRANCISCO MONTES VIGIL, Deceased, et al.,  
Defendants.

*Proof of Publication.*

TERRITORY OF NEW MEXICO,  
County of Bernalillo, ss:

William F. Brogan, being by me first duly sworn, deposes and says that he is the business manager and also the editor of the Albuquerque Weekly Citizen; that said Albuquerque Weekly Citizen was at the times hereinafter mentioned and now is published in the City of Albuquerque, County of Bernalillo aforesaid, and had and now has a general circulation in said city and county, and Territory of New Mexico. That the notice of suit in the above cause, a copy of which is attached to a proof of publication filed in said cause on the 6th day of August, 1906, was printed and published in said Albuquerque Weekly Citizen once a week for four consecutive weeks; and that said notice was so printed and published in said Albuquerque Weekly Citizen on the 23rd day of June, 1906, and the 30th day of June, 1906, and the 7th day of July, 1906, and the 14th day of July, 1906; that said publications of June 23rd, 1906, June 30th, 1906, July 7th, 1906, and July 14th, 1906, were in regular issues of said Albuquerque Weekly Citizen, and all  
11 the issues of said Albuquerque Weekly Citizen from the 23rd day of June, 1906, to the 14th day of July, 1906, both dates inclusive.

WM. F. BROGAN.

Subscribed and sworn to before me, a notary public within and for said county of Bernalillo, by William F. Brogan, this 20th day of September, 1907.

[NOTARIAL SEAL.]

ADELA C. HOLMQUIST,  
Notary Public.

Endorsed: "Filed in my office this Sept. 21, 1907. John Venable, Clerk."

And thereafter, on to-wit, the 9th day of August, 1906, there was entered of record and filed in the office of the clerk of said court, in said cause, an order appointing referee, etc.; which said order is in the words and figures following, to-wit:

In the District Court of the County of Bernalillo, Territory of New Mexico.

No. 7128.

VICENTA MONTOYA, Plaintiff,

vs.

THE UNKNOWN HEIRS OF FRANCISCO MONTES VIGIL, Deceased, et al., Defendants.

This day this cause came on to be heard upon the complaint, proof of publication and certificate of default and was submitted to the court for approval of publication.

Whereupon the court, being fully advised in the premises finds that said publication of notice to said defendants was in all respects regular and in accordance with law, and that said defendants and each of them were duly served by publication of notice and are in default for want of appearance within the time provided in said notice.

It is therefore ordered, adjudged and decreed that the service of notice by publication and said publication of notice be, and the same hereby is approved.

It is further ordered, adjudged and decreed that the said complaint be, and the same hereby is taken as confessed by said defendants.

And now this cause coming on for further hearing upon the application of plaintiff for the appointment of a referee to take the testimony herein and the said plaintiff consenting and requesting the appointment of Harry P. Owen as said referee, it is further ordered, adjudged and decreed that the said Harry P. Owen be and he hereby is appointed as referee, with instructions to take the evidence produced by the respective parties and to report the same to the court with his findings of fact and conclusions of law with all convenient speed.

JOHN R. McFIE,

*Associate Justice of the Supreme Court, Acting  
in the Absence of the Honorable Ira A. Abbott from the Territory.*

Endorsed: "Filed in my office this Aug. 9, 1906. W. E. Dame, Clerk."

And thereafter, on to-wit, the 16th day of March, 1907, there was filed in the office of the clerk of said court, in said cause, answer of certain defendants; which said answer is in the words and figures following; to-wit:

13 In the District Court of the County of Bernalillo, Territory of New Mexico.

No. 7128.

VICENTA MONTOYA, Plaintiff,

VS.

THE UNKNOWN HEIRS OF FRANCISCO MONTES VIGIL, Deceased, et al., Defendants.

*Answer of Certain Defendants.*

Come now the defendants Bonafacio Montoya, Candelaria Montoya de Castillo, Adalberto C. de Baca, Francisco Montoya, Victoriana Montoya, Juan Antonio Rodarte, Rosa Maldonado, Abelino Maldonado, Manuel Gonzales, Nestora Gonzales de Sanchez, Leopoldo Sanchez, Felicita Sanchez, Sofia Sanchez, Raymunda Sanchez de Gonzales, Alfredo Gonzales, Erlinda Gonzales, Ariapapita Gonzales, Aurelia L. de Gonzales, Leopoldo Gonzales, Florencio Gonzales, Esoyla Gonzales, Prospero Gonzales, Epamimondo Gonzales, Aurora R. Gonzales, Maria Sanchez de Martinez, Melquia des Martinez, Felix Tafoya Gonzales, Pedro Sanchez, Merced Gonzales, Fabiana Gonzales, Dolores Griego de Cordova, and for answer to plaintiff's complaint, say that each of them claims an interest in the real estate described in said complaint and joins in the prayer of said complaint for partition of said real estate.

(Signed)

A. B. McMILLEN,  
*Attorney for Defendants.*

Endorsed: "Filed in my office this Mar. 16, 1907. John Venable, Clerk."

And thereafter, on to-wit, the 17th day of June, 1907, there was entered of record in the office of the clerk of said court, and  
14 filed in said cause, judgment for partition of the Alameda Land Grant; which said judgment is in the words and figures following; to-wit:

In the District Court of the County of Bernalillo, Territory of New Mexico.

No. 7128.

VICENTA MONTOYA, Plaintiff,

VS.

THE UNKNOWN HEIRS OF FRANCISCO MONTES VIGIL, Deceased, et al., Defendants.

*Judgment for Partition of Alameda Land Grant.*

This day this cause came on to be heard upon plaintiff's complaint and the answer of Bonafacio Montoya and others, the report of the referee and the record and proceedings in this cause, and was submitted to the court.

Whereupon the court being fully advised in the premises finds that all the proceedings before said referee were regular and in accordance with law, and that the findings of fact and conclusions of law reported by said referee are in accordance with law and the evidence. And the court further finds that the proceedings before said referee were subject to the rights of claimants in severalty in that portion of the Alameda Land Grant in the Rio Grande Valley lying east of the foothills and below the irrigating ditches, in accordance with the exception in plaintiff's complaint; and that said claims

in severalty are not determined in this proceeding, and also  
15 subject to and without prejudice to the rights of Alfredo Sandoval and Jesus Maria Sandoval, as provided in the stipulation between them and plaintiff and filed in this cause, and subject also to the rights of Jacobo Yrisarri, as provided in the order opening default as to said Yrisarri; and the provisions of this decree hereinafter made are also subject to the rights of claimants in severalty in that portion of the Alameda Land Grant in the Rio Grande Valley lying east of the foothills and below the irrigating ditches, and the rights of said claimants are not in any way determined; and this decree is also subject to the rights of said Alfredo Sandoval and Jesus Maria Sandoval as provided in said stipulation, and also subject to the rights of Jacobo Yrisarri to be hereafter determined in accordance with the order opening default as to said Yrisarri, and it is further ordered that said report of said referee be and the same hereby is approved and confirmed.

(2) That the real estate described in plaintiff's complaint and of which partition is sought, is situate in the counties of Bernalillo and Sandoval, Territory of New Mexico, being a tract of land known as the Alameda Land Grant, bounded on the north by the ruins of an old pueblo; on the south by a small hill which was the boundary of Luis Garcia; on the east by the Rio del Norte as it ran in the year 1710 near the eastern foothills, and on the west a prairie and the hills, and containing, according to the official survey thereof, eighty-nine thousand three hundred and forty-six acres of land as will more

fully appear from the record of said survey on file in the office of the Surveyor General of New Mexico, reference to which is made for more particular description.

16 (3) That all of the material allegations of plaintiff's complaint are true, and that she is entitled to the relief prayed for in said complaint.

(4) That there is due the United States of America for cost of the official survey of said grant, the sum of four hundred fifteen and 97/100 dollars, which said sum is a first lien against said real estate and should be paid by the owners thereof according to their respective interests, and out of the proceeds thereof in case of sale.

(5) That the referee, Harry P. Owen, is entitled to and he hereby is allowed the sum of — dollars for his services rendered as referee in said cause, and also an additional sum of thirty dollars on account of traveling expenses necessarily incurred in taking evidence in said cause, both of which said sums are hereby made a charge against said real estate to be taxed and paid as other costs in this cause.

(6) The court further finds that Alonzo B. McMillen necessarily expended in the transportation of witnesses to Albuquerque from distant points to testify in said cause, and for certified copy of decree of confirmation, the sum of seventy-three dollars, which said sum was reasonable and for the benefit of all the parties in said cause, and that the same should be taxed and paid to said McMillen as part of the costs in said cause.

(7) That Alonzo B. McMillen as attorney for plaintiff and for a portion of defendants has had full charge and control of said cause, there being no other attorney in said cause representing undivided interests hereafter found, and that the said McMillen procured and introduced all the testimony before the referee in behalf of

17 owners of undivided interests in said grant to establish the rights hereinafter mentioned, and that all the persons found to have interests in said grant were benefited equally with the plaintiff by the services of said McMillen in conducting the proceedings for the partition of said real estate.

That the said Alonzo B. McMillen had contracts with the plaintiff and certain defendants for whom he entered appearance for an undivided one-third part of their respective interests in said grant, and that all other persons are unrepresented. And the court further finds from the evidence that the customary and usual fee for such services in an undivided one-third of the interests found to be owned by a given person and that such fee is reasonable and that the said several owners mentioned in said report of the referee heretofore filed herein other than those who provided for compensation by contract are bound to convey to plaintiff's attorney a one-third part of the several interests found by the referee to be owned by them respectively, and.

It is further ordered, adjudged and decreed that in lieu of said conveyances that this decree stand in the place thereof, and that one-third of the several interests aforesaid, with the exception of those who have already conveyed as provided by their contracts be deducted from their several interests as found in said report.

(8) The Court further finds that subject to said deductions the



parties hereinafter mentioned and to whom the respective undivided interests in said lands are decreed are the owners of said tract of land in fee simple, as tenants in common in proportions as indicated by the fractions set opposite their respective names, and that no person or persons other than said parties hereinafter mentioned have any interest in or title to said land or any part thereof in possession, remainder, reversion or otherwise, except as hereinbefore excepted.

The court doth therefore order, adjudge and decree that the persons hereinafter mentioned are entitled to and hereby are declared to own an undivided interest in said premises in fee simple, the interest owned by each being indicated by the fraction set opposite his name, to-wit:

Geronima Camacha .....	1-1440
Mariano Gonzales .....	1-480
Rosa Sales .....	1-1080
Santiago Gonzales .....	1-1080
Borga Gonzales .....	1-1080
Crescenciana Polaco .....	1-2880
Anastacia Polaco .....	1-2880
Transito Polaco .....	1-2880
Candido Polaco .....	1-2880
Elfego Polaco .....	1-2880
Rodolfo Polaco .....	1-2880
Almagracia Polaco .....	1-2880
Consolacion Polaco .....	1-2880
Trinidad Gutierrez .....	1-2520
Jose Gutierrez .....	1-2520
Petra Tenorio .....	1-2520
Adela Gutierrez .....	1-2520
Margarita Gutierrez .....	1-2520
Geronima Gutierrez .....	1-2520
Santiago Gutierrez .....	1-2520
Avelina Garcia .....	1-1440
Conrado Gonzales .....	1-3360
Candido Gonzales .....	1-3360
Tereza Gonzales .....	1-3360
Sofia Montoya .....	1-6720
Francisco Montoya .....	1-6720
19 Beatriz Gonzales .....	1-3360
Carlos Gonzales .....	1-3360
Candelaria Gonzales .....	1-3360
Raymunda Sanchez .....	2-2880
Erlinda Gonzales .....	1-4800
Alfredo Gonzales .....	1-4800
Prospero Gonzales .....	1-4800
Leopoldo Gonzales .....	1-4800
Epamimanda Gonzales .....	1-4800
Aurora Gonzales .....	1-4800
Ariapapita Gonzales .....	1-4800

Esyla Gonzales .....	1-4800
Aurelia Gonzales .....	1-4800
Florencia Gonzales .....	1-4800
Dolores Arellanes .....	1-600
Celsa Arellanes .....	1-600
Juan Montoya .....	1-300
David Perea .....	1-1200
— Perea, child of Margarita Montoya and David Perea .....	1-400
Borga Candelaria .....	1-1800
Constancio Candelaria .....	1-1800
Ezequiel Candelaria .....	1-1800
Samuel Candelaria .....	1-1800
Monica Candelaria .....	1-1800
Trinidad Candelaria .....	1-1800
Justiniana Garcia .....	1-1200
Valerio Montoya .....	1-1600
Epimenio Montoya .....	1-1600
Teofilo Montoya .....	1-1600
Monica Montoya .....	1-1600
Jesus Montano .....	1-60
Soledad Martinez .....	1-120
Julio Martinez .....	1-120
Guadalupe Gutierrez .....	1-240
20   Rafaela Gutierrez .....	1-240
Antonio Maria Griego .....	1-720
Ignacio Silva .....	1-720
Virginia Griego .....	1-720
Abran Gutierrez .....	1-240
Manuel Romero .....	1-144
Felipe Romero .....	1-432
Ignacio Romero .....	1-432
Barbara Romero .....	1-432
Cecelia Chaves .....	1-720
Antonia Chaves .....	1-720
Eulalia Chaves .....	1-720
Rumaldo Chaves .....	1-720
Rumaldo Montoya .....	1-2880
Elias Montoya .....	1-5760
Salome Montoya .....	1-5760
Bruna Montoya .....	1-5760
Francisca Montoya .....	1-5760
Juana Montoya .....	1-5760
— Montoya, child of Nestora Chaves and Rumaldo Montoya .....	1-5760
Manuel Garcia .....	1-720
Ana Maria Garcia .....	1-720
Sinforiana Garcia .....	1-720
Leonor Garcia .....	1-720
Marcelina Garcia .....	1-720
Jesus Rodarte .....	1-144
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Eulalia Chaves .....	1-576
Jose Rodarte .....	1-1152
Maria Rodarte .....	1-1152
Herminio Rodarte .....	1-1152
Pablo Rodarte .....	1-1152
Gaspar Rodarte .....	1-1152
Monica Rodarte .....	1-1152
Andrea Rodarte, hrs. of, of whom are proven: the	
21 husband, Santos Arias, living, and three chil-	
dren, names not proven .....	1-144
Ponceano Barela .....	1-27216
Juan E. Barela .....	1-27216
Eugenio Barela .....	1-27216
Alfredo Barela .....	1-27216
Mariano Barela .....	1-27216
Candelaria Barela .....	1-27216
Aurelia Barela .....	1-27216
Ramon Gonzales .....	1-3888
Felipe Lucero .....	1-15552
Sara Lucero .....	1-15552
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## IX.

The court doth therefore order, adjudge and decree that said report of said referee be, and the same hereby is, approved and confirmed, and that the persons above mentioned in Paragraph VIII are each entitled to the portion of said real estate so found to be owned by each of them in fee simple, subject to the unpaid taxes against said grant and the charges above provided.



## X.

The court doth further order, adjudge and decree that a partition and division of said premises be made among the above mentioned persons according to their respective rights; that John M. Moore and James F. Brown and Sigfrid Seligman, neither of whom appear to be connected with any of the parties either by consanguinity or affinity, and who are entirely disinterested, be and they hereby are, appointed commissioners to make partition of said premises; that each of said commissioners shall take and subscribe an oath fairly and impartially to make partition of said real estate in accordance with the judgment of the court as to the rights and interests of the parties if the same can be done consistently with the interests of the estate. And the commissioners shall go upon said land and make partition thereof, assigning to each party his share by metes and bounds, and if said real estate is so circumstanced that partition thereof cannot be made without manifest prejudice to the owners thereof, then the commissioners will so report. Said commissioners shall make their report to the court in writing under their hands and seals with all convenient speed.

(Signed)

IRA A. ABBOTT,  
*Associate Justice, etc.*

Endorsed: "Filed in my office this June 17 1907, John Venable, Clerk."

And thereafter, on to-wit, the 5th day of July, 1907, there was filed in the office of the clerk of said court, in said cause, affidavit of commissioners; which said affidavit is in the words and figures following, to wit:

In the District Court of the County of Bernalillo, Territory of New Mexico.

No. 7126.

VICENTA MONTOYA, Plaintiff,

vs.

UNKNOWN HEIRS OF FRANCISCO MONTES VIGIL et al., Defendants.

*Affidavit of Commissioners.*

TERRITORY OF NEW MEXICO,  
County of Bernalillo, ss:

John M. Moore, James F. Brown and Siegfried Seligman, being by me first duly sworn, say each for himself and not one for the other, that he will fairly and impartially make partition of the premises mentioned in the judgment rendered by the court in the above entitled cause on the 17th day of June, 1907, according to the rights

and interests of the several parties as declared therein by the judgment of the court if the same can be done consistently with the interests of the estate.

(Signed) JOHN M. MOORE,

(Signed) JAMES F. BROWN.

(Signed) SIGFRIED SELIGMAN.

Subscribed and sworn to before me by the said John M. Moore, James F. Brown and Siegfried Seligman this 3rd day of July, 1907.

[SEAL.]

(Signed)

HARRIET MAYFIELD,

*Notary Public.*

Endorsed: "Filed in my office this July 5, 1907. John Venable, Clerk."

And thereafter, on to-wit, the 5th day of July, 1907, there was filed in the office of the clerk of said court in said cause, report of commissioners; which said report is in the words and figures following, to-wit:

35 In the District Court of the County of Bernalillo, Territory of New Mexico.

No. 7126.

VICENTA MONTOYA, Plaintiff,

VS.

UNKNOWN HEIRS OF FRANCISCO MONTES VIGIL et al., Defendants.

*Report of Commissioners.*

To the Honorable Ira A. Abbott, Judge of said Court:

In pursuance of the judgment and decree in the above entitled cause made and entered the 17th day of June, 1907, we, the commissioners therein named, respectfully report to the court that after each of us having taken and subscribed an oath fairly and impartially to make partition of the premises mentioned in said judgment and decree according to the rights and interests of the parties as declared therein according to the judgment of the court if the same could be done consistently with the interests of the estate, which said oath is filed herewith and made a part hereof; that we have gone upon the premises described in said judgment, situate in the counties of Bernalillo and Sandoval, Territory of New Mexico, being a tract of land known as the Alameda Land Grant, bounded on the north by the ruins of an old pueblo; on the south by a small hill which was the boundary of Luis Garcia; on the east the Rio del Norte as it ran in the year 1710 near the eastern foothills; and on the west a prairie and the hills, and containing according to the official survey thereof, eighty-nine thousand three hundred and forty-

36 six acres of land, as will more fully appear from the record of said survey on file in the office of the surveyor general of New Mexico, reference to which is made for more particular description.

We further report that owing to the nature of the land, most of which is fit only for grazing purposes, and owing to the large number of owners, there being more than five hundred, and to the fact that the interests in many instances are very small, that partition of said premises cannot be made consistently with the interests of the estate or the rights of the persons found to own interests therein, and that a division thereof would be manifestly prejudicial to the owners thereof.

Witness our hands and seals this 3rd day of July, 1907.

JOHN M. MOORE. [SEAL.]  
SIGFRIED SELIGMAN. [SEAL.]  
JAMES F. BROWN. [SEAL.]

Endorsed: "Filed in my office this July 5, 1907, John Venable, Clerk."

And thereafter, on to-wit, the 20th day of November, 1907, there was entered of record and filed in the office of the clerk of said court, in said cause, an order allowing intervention; which said order is in the words and figures following, to wit:

### 37 TERRITORY OF NEW MEXICO:

In the District Court, Second Judicial District, Bernalillo County.

No. 7126.

VICENTA MONTOYA, Plaintiff,

vs.

THE UNKNOWN HEIRS OF FRANCISCO MONTES VIGIL, Deceased;  
The Unknown Heirs of Juan Gonzales, Deceased, and All Unknown Owners of Real Estate Hereinafter Described, Defendants.

### Order.

It appearing to the court that the persons who filed a special appearance in this action, by motion, on the 20th day of July, 1907, claimed to be interested in the premises described in the complaint herein, and it further appearing that this suit and proceeding is still pending:

It is hereby ordered that each and all of said persons so appearing by special motion in this action filed in this cause on July 20th, 1907, as aforesaid, be and they hereby are allowed to appear and answer the complaint of the plaintiff in this action by way of intervention, and that said persons may assert any right, with the same force and effect as though said persons had been made parties in the first instance in this action, to which order plaintiffs except.

It is further ordered that each and all of said persons so allowed to answer by way of intervention as aforesaid, be and they hereby are allowed twenty days within which to file their said answer.

38 Done in court this 20th day of November, 1907.

IRA A. ABBOTT, Judge.

Endorsed: "Filed in my office this Nov. 20, 1907. John Venable, Clerk."

And Thereafter, on to-wit, the 29th day of November, 1907, there was filed in the office of the clerk of said court, in said cause, answer of Alejandro Sandoval, et al., which said answer is in the words and figures following, to-wit:

In the District Court of the County of Bernalillo, Territory of New Mexico.

No. 7126.

VICENTA MONTOYA, Plaintiff,

vs.

THE UNKNOWN HEIRS OF FRANCISCO MONTES VIGIL, Deceased;  
The Unknown Heirs of Juan Gonzales, Deceased, and All Unknown Owners of the Real Estate *tate* Hereinafter Described, Defendants.

*Answer.*

Come now Alejandro Sandoval, Julio Martinez, Jose Felipe Silva, A. Salce, L. Salce, Antonio Ignacio Martinez, Manuel Maria Martinez, Secundino Sandoval, Victoriano Santillanez, Higinio Cordova, Federico Gutierrez, Irinea C. Griego, Octaviano Lopez, Jose Dolores Lopez, Geronima C. Gonzales, Mariano Gonzales, Santiago Griego, Donaciano Perea, Melquiades Martinez, Teofilo Perea, Rafael Masestas, Jose Manuel Sanchez, Jesus Maria Gutierrez, Felix Gutierrez, Daniel Apodaca, Felix Tafoya, Jose Ramon Tenorio, Petra Tenorio, Leandro Griego, Evaristo Griego, Jacobo Sanchez, Albina M. Sanchez, Julio Montoya, Martin Apodaca, Leonor T. de Gonzales, Nicanor Martinez, Jose Leon Gutierrez, Luis Tafoya, Bonifacio Carrillo, Delfino Gutierrez, Rafaela G. de Gonzales, Pablo Gutierrez, Tomas Montoya, Gabriela Tenorio, Adron Jones, Elias Tenorio, Luis Garcia, Daniel D. Gallegos, Jose Felipe Montoya, Petronilo Martinez, Toribio Armijo, R. F. Heller, Nazario Perea, Jesus Perea, Jose Chavez, Juan Montoya, Andred F. Gallegos, Victor Tafoya, Guadalupe G. de Martinez, Francisco Gonzales, Alejandro Gonzales, Juan C. Lopez, Diego Martinez, Guillermo Martinez, Pomposo Griego, Jose Leandro Garcia, Manuel Perea y Miera, Maria Griego de Carrillo, Candelario Santillanez, Valentin Leal, Agustin Alary, Joe Pinna, Charles Marra, Domingo Ayra, Augustin Parisia, Marcelina M. Gonzales, Elias Martinez, Benicio Martinez, Jesus Tenorio, Francisco Lucero y Chavez, Juan Garcia, Leon Darras, Elias Montoya, E. A. Miera, Francisco Lucero y Montoya, Abenicio Perea and Jesus Garcia, and for their answer to plaintiff's complaint herein and asserting respective rights herein by way of intervention, say:

1. Defendants deny the allegations contained in paragraph one of plaintiff's complaint.

2. Defendants on information and belief admit the allegations contained in paragraphs 2, 3 and 4 of plaintiff's complaint.



3. Defendants deny the allegations contained in paragraph 5 of plaintiff's complaint.

4. Defendants admit that a portion of said tract of land in the Rio Grande Valley lying east of the foothills and below the irrigation ditches is occupied by various persons and claimed in severalty; but they deny that they claim the same in severalty by reason of original allotments or by adverse possession only, and allege that they also claim the same in severalty because they have owned and held the same by themselves and their predecessors in title for more than fifty years last past, holding and claiming the same under and by virtue of deeds of conveyance, devise, grant and other assurances purporting to convey an estate in fee simple, and that no claim by suit in law or equity effectually prosecuted has been set out or made to said lands and separate holdings within the aforesaid time of more than fifty years.

And defendants deny that all or any of the land lying west of the irrigating ditches and foothills or a portion of the land lying east of said irrigation ditches and foothills in the Rio Grande Valley, or that any lands whatsoever of the tract of land known as the Alameda Grant and involved in this action, are held and occupied by the plaintiff and the defendants other than the unknown heirs of Francisco Montes Vigil, or by any other person or persons whatsoever, as tenants in common.

5. Defendants deny each and every allegation contained in paragraph 7 of plaintiff's complaint.

6. And by way of defense, these defendants allege: That they are the owners in severalty and in possession respectively of divers tracts of lands situate within the boundaries of the tract of land described in plaintiff's complaint, and that they and divers other persons are the owners in severalty and in possession of divers tracts of land situate within the boundaries of the tract described in said complaint, which said divers tracts of land so owned and held

in severalty constitute all of the tract of land known as the Alameda Grant and described in plaintiff's complaint; that they and their predecessors in title have had possession thereof respectively for more than fifty years last past, holding and claiming the same by virtue of deeds of conveyance, devise, grant and other assurances purporting to convey an estate in fee simple, and that no claim by suit, in law or equity, effectually prosecuted has been set out or made to said lands within the aforesaid time of more than fifty years.

7. That they are the owners in severalty and in possession, respectively, of divers tracts of lands situate within the boundaries of the tract of land described in plaintiff's complaint, and that they and their predecessors in title have had possession of each of said tracts of land respectively, for more than fifty years last past, holding and claiming the same by virtue of deeds of conveyance, devise, grant and other assurances purporting to convey an estate in fee simple, and that no claim by suit, in law or equity, effectually prosecuted, has been set out or made to said lands within the aforesaid time of more than fifty years.



8. These defendants further allege that portions of the lands lying west of the irrigating ditches are not susceptible of irrigation and are only valuable and can only be used for grazing purposes; that the tracts of land owned and held in severalty as herein alleged, embrace the lands lying west of the irrigating ditches, and also the lands lying east of said irrigating ditches, portions of which are also not susceptible of irrigation and are only valuable and can only be used

42 for grazing purposes; that portions of said lands lying east and west of the irrigating ditches are susceptible of irrigation, that they are parts of the same lands and are embraced and described as such in the assurances of title aforesaid; that these defendants and their predecessors in title and the other divers persons and their predecessors in title have been in the open, actual, hostile, exclusive and continuous possession of each and all tracts of land owned and held by them in severalty as aforesaid, and that all of the tract of land known as the Alameda Land Grant, and described in plaintiff's complaint, has been so owned and held for more than fifty years last past; that during all said period of time these defendants and their predecessors in title and the said divers other persons and their predecessors in title respectively, have occupied, cultivated and improved those portions of said lands susceptible of irrigation, cultivation and improvement and have used the remainder thereof for grazing purposes, and claiming to own the whole of their individual possessions and holdings and the whole thereof, by virtue of deeds of conveyance, devise, grant and other assurances purporting to convey an estate in fee simple to each and all of said lands respectively.

9. Defendants further allege that each and all of the lands owned and held in severalty by them as aforesaid, respectively, are so owned and held by them in fee simple, and that the said plaintiff and any and all other persons whatsoever have no right, title or interest therein, either as tenants in common or in any other manner whatsoever.

10. Defendants further allege that the plaintiff, Vicenta Montoya, was the owner of a certain tract of land thirty-four varas wide from north to south and in length extending from about three  
43 hundred yards east of Corrales lower ditch to the west boundary line of the said Alameda Grant, bounded on the north by lands of Rafaela Gutierrez de Gonzales, on the south by lands of the heirs of M. S. Otero, deceased, on the east by lands of E. M. Sandoval, and on the west by the west boundary line of said Alameda Grant, which said tract of land she inherited from one Jose Antonio Montoya, her grandfather, and that she owned and held the same in severalty; that on the — day of March, 1907, she conveyed the same to one Abenicio Perea in fee simple; and these defendants allege that the said tract of land was and is the only land that plaintiff owned in said grant, and that plaintiff has never had any other interest, either in common or otherwise, in any lands in said grant, and these defendants allege that plaintiff is not an interested party in this action.

Wherefore, these defendants pray that the prayer in plaintiff's

complaint be denied; that the title of defendants to any and all lands owned by them in severalty or otherwise be declared and established and duly and forever quieted, and they be hence dismissed with their costs in this behalf expended.

ALEJANDRO SANDOVAL,  
*And others, Defendants Herein Named.*

A. A. SEDILLO, AND  
GEORGE S. KLOCK,  
*Attorneys for Defendants, Albuquerque, New Mexico.*

Endorsed: "Filed in my office this Nov. 29, 1907. John Venable, Clerk."

And Thereafter, on to-wit, the 3rd day of December, 1907, there was filed in the office of the clerk of said court, in said cause,  
44 reply to answer and interpleader of Alejandro Sandoval, et al., which said reply is in the words and figures following, to-wit:

In the District Court of the County of Bernalillo, Territory of New Mexico.

No. 7126.

VICENTA MONTOYA, Plaintiff,

vs.

UNKNOWN HEIRS OF FRANCISCO MONTE VIGIL, Deceased, et al.,  
Defendant.

*Reply to Answer and Interpleader of Alejandro Sandoval et al.*

The plaintiff, and the defendants represented by A. B. McMillen, for reply to the answer and interpleader of Alejandro Sandoval and others heretofore filed herein, deny each and every allegation in said answer and interpleader contained.

ALONZO B. McMILLEN,  
*Attorney for Plaintiff and Defendants*  
*Represented by A. B. McMillen.*

Endorsed: "Filed in my office this Dec. 3, 1907. John Venable, Clerk."

And thereafter, on to-wit, the 17th day of December, 1907, there was filed in the office of the clerk of said court, in said cause, the amended answer of Candido G. Gonzales, which said answer is in the words and figures following, to-wit:

45 In the District Court of the County of Bernalillo, Territory of New Mexico.

No. 7128.

VICENTA MONTTOYA, Plaintiff,

VS.

UNKNOWN HEIRS OF FRANCISCO MONTES VIGIL, Deceased, et al,  
Defendant.

*Answer of Candido G. Gonzales.*

Comes now Candido G. Gonzales, one of the defendants in the above styled cause, and for his separate and amended answer to plaintiff's complaint in said cause and asserting his rights herein by way of intervention, says:

1. Defendant denies the allegations contained in paragraph 1 of plaintiff's complaint.

2. Defendant on information and belief admits the allegations contained in paragraphs 2, 3 and 4 of plaintiff's complaint.

3. Defendant denies the allegations contained in paragraph 5 of plaintiff's complaint.

4. Defendant admits that a portion of said tract of land in the Rio Grande valley lying east of the foothills and below the irrigation ditches is occupied by various persons and claimed in severalty; he denies that they claim in severalty by reason of original allotments or by adverse possession only, and alleges that they also claim the same in severalty because they have owned and held the same by themselves and their predecessors in title for more than fifty years last past, holding and claiming the same under and by virtue of deeds of conveyance, devise, grant, and other assurances purporting to convey an estate in fee simple, and that no claim by suit

46 in law or equity effectually prosecuted has been set out or made to said lands and separate holdings within the aforesaid time of more than fifty years.

And defendant denies that all or any of the land lying west of the irrigating ditches and foothills or a portion of the land lying east of said irrigating ditches and foothills in the Rio Grande Valley, or that any land whatsoever of the tract of land known as the Alameda Grant and involved in this action, are held and occupied by the plaintiff and the defendants other than the unknown heirs of Francisco Montes Vigil, or by any other person or persons whatsoever, as tenants in common.

5. Defendant denies each and every allegation contained in paragraph 7 of plaintiff's complaint.

6. And by way of defense defendant alleges: That he is the owner in severalty and in possession of divers tracts of land situate within the boundaries of the tract of land described in plaintiff's complaint, and that he and divers other persons are the owners in severalty and in possession of divers tracts of land situate within the

boundaries of the tract of land described in said complaint, which said divers tracts of land so owned and held in severalty constitute all of the tract of land known as the Alameda Grant and described in plaintiff's complaint; that they and their predecessors in title have had possession thereof respectively for more than fifty years last past, holding and claiming the same by virtue of deeds of conveyance, devise, grant and other assurances purporting to convey an estate in fee simple, and that no claim by suit, in law or equity, effectually prosecuted, has been set out or made to said lands within the aforesaid time of more than fifty years.

47 7. Defendant further alleges that he is the owner and in possession of the following described tracts of land situate within the boundaries of the tract of land described in plaintiff's complaint, and involved in this action, to-wit:

A tract of land containing two hundred and eighty-six varas and fourteen and one-quarter inches wide from north to south and extending from the Rio Grande River on the east to the Seja del Rio Puerco or west boundary of the Alameda Grant; bounded on the north by lands of Conrado Gonzales; on the south by land of Abelina G. de Gonzales; on the east by the Rio Grande River, and on the west by the Seja of the Rio Puerco, or west boundary of the Alameda Grant.

A tract of land situated in Precinct No. 2 (Corrales), containing 30 varas wide from north to south and in length from the Rio Grande to the Seja of the Rio Puerco or west boundary line of the Alameda Grant; bounded on the north by land of Eugene Wilkeson, on the east by the Rio Grande River, on the south by land of Marcus Martinez and on the west by the Seja of the Rio Puerco, or west boundary line of the Alameda Grant.

A tract of land situated in said Precinct No. 2, Sandoval County, New Mexico, containing twenty-five varas wide from north to south and from east to west from the Rio Grande River to the limits of the Alameda Grant, or Seja of the Rio Puerco; bounded on the north by land of Candido G. Gonzales and Jesus Garcia, on the east by the Rio Grande, on the south by land of Candido G. Gonzales and on the west by the limits of the Alameda Grant or the Seja of the Rio Puerco.

48 A tract of land situated in said Precinct No. 2, containing forty-two varas, more or less, from north to south, and being bounded as follows, to-wit: On the north by lands of Candido G. Gonzales, on the south by lands of Aniceto Armijo, on the east by the acequia Madre of Corrales, and on the west by the Seja del Rio Puerco, or the west boundary line of the Alameda Grant.

A tract of land being 100 varas in width and being a part of that tract of land commonly known as Rancho Abajo, situate at Corrales, or Sandoval, New Mexico, and which said tract of land is bounded as follows: On the north by that part of said ranch conveyed to Sofia Montoya and Francisco X. Montoya, on the south with that part of said ranch conveyed to Horacio C. Gonzales and Leonora M. Gonzales, on the east by the Rio Grande, and on the west by the limits of the Alameda Land Grant, or Seja del Rio Puerco.



A tract of land situated in Precinct No. 2, Corrales, New Mexico, containing forty-two and one-half varas wide from north to south and in length from the Rio Grande River to the Seja of the Rio Puerco; bounded on the north by lands of Conrado Gonzales, on the east by the Rio Grande, on the south by lands of Juan Gonzales, and on the west by the Seja del Rio Puerco, or west boundary line of the Alameda Grant.

A tract of land situate in the town of Sandoval (formerly Corrales), in the County of Sandoval, and Territory of New Mexico, and being 25 varas from north to south and bounded as follows: On the north by lands of or formerly owned by Santiago Padillo, on the east by the Rio Grande (River), on the south by lands of or  
49 formerly owned by Juan Lucero, and on the west by the limits of the Alameda Land Grant.

A tract of land situate, lying and being in the County of Sandoval, Territory of New Mexico, to-wit: A strip of land in the town of Sandoval (formerly Los Corrales) in said county, running from the Rio Grande on the east, to the limits of the Alameda Land Grant on the west, and measuring fifty-six and one-fourth varas in width from north to south and being bounded as follows: On the north by land now or formerly owned or claimed by Juan Lucero, on the east by the Rio Grande, on the south by land now or formerly owned or claimed by Marcoa Martinez, and on the west by said limits of the Alameda Land Grant.

All that tract and parcel of land and real estate situate, lying and being in the County of Sandoval, Territory of New Mexico, to-wit: A certain piece of land situate in the town of Sandoval (formerly Los Corrales), County of Sandoval, and Territory of New Mexico, and bounded as follows: On the north by the lands of Maria Tafoya, on the south the lands of the late Eugene Wilkeson, on the east by the Rio Grande, on the west by the limits of the Alameda Land Grant, being forty-three and three-fourths varas wide from north to south and about fifteen miles from east to west.

A tract of land containing 13 varas wide from north to south and extending from the Rio Grande on the east to the limits of the Alameda Land Grant on the west, bounded on the north by lands of Adelaida Garcia, on the south by lands of Bonifacio Garrillo, on the east by the Rio Grande, and on the west by the limits of the Alameda Land Grant or Le Seja del Rio Puerco.

50 A tract of land situate in and a part of the Alameda Land Grant, bounded and described as follows, to-wit: Extending from the Rio Grande on the east to the Seja, or brow of the Rio Puerco on the west, and in width from north to south sixteen hundred and ten varas, said strip of land being known as the Place of Santiago, or more commonly designated "La Vega de Santiago," and bounded on the north by lands formerly owned by Jose de Armijo, on the south by the southern end of the Vega de Santiago and by lands formerly owned by Antonio Jose Trujillo, said tract of land being the same land conveyed by a deed dated June 15th, 1790.

Defendant alleges that he has had possession of each and all of



the tracts of land aforesaid and that he and his predecessors in title have had possession of each and all of said tracts of land, respectively, for more than fifty years last past, holding the same by virtue of deeds of conveyance, devise, grant and other assurances purporting to convey an estate in fee simple, and that no claim by suit in law or equity effectually prosecuted has been set out or made to said land within the aforesaid time of more than fifty years.

8. Defendant alleges that portions of the lands above described lying west of the irrigating ditches are not susceptible of irrigation and are only valuable and can only be used for grazing purposes; that said described land embraces lands lying west of the irrigating ditches and also lands lying east of the said irrigating ditches, portions of which are also not susceptible of irrigation and are only valuable and can only be used for grazing purposes; that portions of said described land lying east and west of the irrigating ditches are susceptible of irrigation, that they are parts of the same lands

51 and are embraced and described as such in the assurances of title aforesaid; that defendant and his predecessors in title have been in open, actual, hostile, exclusive and continuous possession of each and all of the tracts of land owned and held by defendant in severalty as aforesaid for more than fifty years last past; that during all said period of time defendant and his predecessors in title have occupied, cultivated and improved those portions of said lands susceptible of irrigation, cultivation and improvement and have used the remainder thereof for grazing purposes and claiming to own the whole of each and all of said tracts of land by virtue of deeds of conveyance, devise, grant and other assurances purporting to convey an estate in fee simple to each and all of said tracts of land; that the tracts of land owned and held in severalty as herein alleged by the divers other persons aforesaid also embrace lands lying west and east of the irrigating ditches, portions of which are susceptible of irrigation and the remainder thereof being valuable and used only for grazing purposes, but being parts of the same lands and embraced and described as such in the assurances of title aforesaid, and that they have been in the open, actual, hostile, exclusive and continuous possession of each and all tracts of land owned and held by them in severalty as aforesaid, and that all of the tracts of land known as the Alameda Land Grant, and described in plaintiff's complaint have been so owned and held for more than fifty years last past, and that during all said period of time they have occupied, cultivated and improved those portions of said lands susceptible of irrigation, cultivation and improvement, and have used the remainder thereof for grazing purposes, and claiming to own

52 the whole of their individual possessions and holdings, and the whole thereof, by virtue of deeds of conveyance, devise, grant and other assurances purporting to convey an estate in fee simple to each and all of said lands respectively.

9. Defendant further alleges that each and all of the lands owned and held by him in severalty, and heretofore described, respectively, are owned and held by him in fee simple, and that the plaintiff and any and all other persons whatsoever have no right, title or

interest thereto, either as tenants in common or in any other manner whatsoever.

10. Defendant further alleges that the plaintiff, Vicenta Montoya, was the owner of a certain tract of land thirty-four varas wide from north to south, and in length extending from about three hundred yards east of Corrales lower ditch to the west boundary line of the said Alameda Grant, bounded on the north by lands of Rafaela Gutierrez de Gonzales, on the south by lands of the heirs of M. S. Otero, deceased; on the east by lands of E. M. Sandoval, and on the west by the west boundary line of said Alameda Grant, which said tract of land she inherited from one Jose Antonio Montoya, her grandfather, or other lineal progenitor, and that she owned and held the same in severalty; that on the — day of March, 1907, she conveyed the same to one Abenicio Perea in fee simple, and this defendant alleges that the said tract of land was and is the only land that plaintiff owned in said grant and that plaintiff has never had any other interest, either in common or otherwise, in any lands in said grant, and this defendant alleges that this plaintiff is not an interested person in this action.

Wherefore, this defendant prays that the prayer in plaintiff's complaint be denied; that the title of defendant to any and all lands owned by him in severalty or otherwise, be declared and established and duly and forever quieted, and that defendant be hence dismissed with his costs in this behalf expended.

CANDIDO G. GONZALES,

*Defendant.*

GEORGE S. KLOCK AND

A. A. SEDILLO,

*Attorneys for Defendant, Albuquerque, New Mexico.*

Endorsed: "Filed in my office this Dec. 17, 1907. John Venable, Clerk."

And thereafter, on to-wit, the 19th day of December, 1907, there was filed in the office of the clerk of said court, in said cause, reply to answer and intervening petition of Candido G. Gonzales, which said reply is in the words and figures following, to-wit:

TERRITORY OF NEW MEXICO,  
County of Bernalillo:

In the District Court.

No. 7128.

VICENTA MONTOYA, Plaintiff,  
vs.

UNKNOWN HEIRS OF FRANCISCO MONTES VIGIL, Deceased, et al.,  
Defendants.

*Reply to Answer and Intervening Petition of Candido G. Gonzales.*

54 The plaintiff for reply to the answer and intervening petition of Candido G. Gonzales, denies each and every allegation in said answer and intervening petition contained.

ALONZO B. McMILLEN,  
Attorney for Plaintiff.

Endorsed: "Filed in my office this Dec. 19, 1907. John Venable, Clerk."

And thereafter, on to-wit, the 24th day of February, 1909, there was filed in the office of the clerk of said court, in said cause, answer of A. B. McMillen, which answer is in words and figures following to-wit:

TERRITORY OF NEW MEXICO,  
County of Bernalillo:

In the District Court.

No. 7128.

VICENTA MONTOYA, Plaintiff,  
vs.

UNKNOWN HEIRS OF FRANCISCO MONTES VIGIL, Deceased, et al.,  
Defendants.

*Answer of A. B. McMillen.*

Comes now A. B. McMillen, in his own proper person, and alleges that he is the owner of the undivided 26857-80480 of the Alameda Land Grant, the subject of partition in the complaint in this cause, as shown by the decree of partition heretofore entered herein; and he hereby joins in the prayer of said complaint for partition of said Alameda Land Grant.

A. B. McMILLEN.

Endorsed: "Filed in my office this Feb. 24, 1909. John Venable, Clerk."

55 And thereafter, on to-wit, the 11th day of March, 1909, there was filed in the office of the clerk of said court, in said cause, stipulation between attorneys for interveners and attorney for plaintiff; which said stipulation is in the words and figures following, to-wit:

TERRITORY OF NEW MEXICO,  
County of Bernalillo:

In the District Court.

No. 7126.

VICENTA MONTOYA, Plaintiff,

VS.

UNKNOWN HEIRS OF FRANCISCO MONTES VIGIL, Deceased, et al.,  
Defendants.

*Stipulation.*

It is hereby stipulated and agreed between George S. Klock and A. A. Sedillo, as attorneys for interveners, and A. B. McMillen, as attorney for plaintiff, that

Emilio Alary,  
Bernabel C. de Baca,  
Juan Dominguez,  
Anastacio Garcia,  
Heirs of Abelino G. de Gonzales,  
Jose Griego,  
Heirs of Nieves Montoya de Sandoval,  
Vicenta Garcia,  
Santiago Gutierrez,  
Heirs of Antonio Jose Montoya,  
Carlos Martinez,  
Jesus Garcia,

56 Justiniano Gutierrez,  
Beatriz Gonzales de Heller,  
Heirs of Dolores G. de Griego or Delfino Griego,

Sofia Montoya,  
Francisco X. Montoya,  
Noyola Chavez,  
Borja C. de Martinez,  
Trinidad Candelaria,  
Teresa Gonzales de Sandoval,  
Filomena Perea de Garcia,  
Eremita Chavez,  
Santiago Anaya,  
Heirs of Antonio Jose Gonzales,

be and they hereby are to be considered as original interveners herein, and as having been named in the original intervening peti-



tion as interveners, and to have the same rights, and no others, as if they had been parties to said intervening petition, the said attorney for plaintiff not waiving any objections that he might lawfully have made to any of said parties as interveners had they been named in the original intervening petition.

(Signed)

GEORGE S. KLOCK,

(Signed)

A. A. SEDILLO,

*Attorneys for Interveners.*

(Signed)

A. B. McMILLEN,

*Attorney for Plaintiff.*

Endorsed: "Filed in my office this March 11, 1909. John Venable, Clerk."

And thereafter, on to-wit, the 11th day of March, 1909, there was entered of record and filed in the office of the clerk of said court, in said cause, judgment confirming report of commissioners and order of sale, which said judgment and order are in the words and figures following, to-wit:

57 TERRITORY OF NEW MEXICO,  
County of Bernalillo:

In the District Court.

No. 7128.

VICENTA MONTOYA, Plaintiff,

vs.

UNKNOWN HEIRS OF FRANCISCO MONTES VIGIL, Deceased, et al.,  
Defendants.

*Judgment Confirming Report of Commissioners and Order of Sale.*

This day this cause came on for further hearing, and came also John M. Moore, James F. Brown and Sigfried Seligman, commissioners heretofore appointed to make partition of the premises hereinafter described, and make report that the same are so circumstanced that partition and division of said premises cannot be made consistently with the interests of the estate or the rights of the parties, and that a division thereof would be manifestly prejudicial to the owners thereof.

And the court doth find that said commissioners took the oath according to law as directed by the court, and that said commissioners have in all respects proceeded in accordance with law and the terms of the judgment under which they were appointed.

And the court being fully advised in the premises, doth order, adjudge and decree that the proceedings of said commissioners and their report be and the same are hereby approved and confirmed.

And the court further finds that each of said commissioners is



entitled to the sum of \$15.00 each as compensation for his  
58 services in this behalf; to be taxed and paid as part of the  
costs of this cause.

The court further finds that the said commissioners have incurred  
an expense of \$7.00 on account of livery hire and other expenses  
of said trip; which said sum was paid by A. B. McMillen; and it is  
further ordered that the same be taxed and paid as a part of the costs  
in this cause.

And the court having announced its decision in the intervention  
proceeding of Candido G. Gonzales and other interveners represented  
by George S. Klock and A. A. Sedillo and of the intervener, Jacobo  
Yrisarri, favorable to the respective interveners, but the decree fixing  
the rights of said interveners not having been entered of record, and  
it appearing advisable that the respective decrees in favor of inter-  
veners should be separately entered, it is ordered that the order of  
sale herein, and the sale to be made in pursuance thereof, shall be  
subject to the rights of said interveners respectively, as established  
by such order, judgment and decree as shall be finally made in favor  
of said interveners respectively either in this court or in any proper  
appellate court on appeal; and it is further ordered that said sale be  
made subject to the exceptions and reservations heretofore made in  
the decree of partition, and subject to the rights of George Hill  
Howard in and to the lands set forth in his intervening petition  
heretofore filed in this cause, in accordance with the written stipula-  
tion on file in this cause.

And this cause coming on to be further heard upon the report of  
said commissioners, the court, being fully advised in the premises,  
doth order, adjudge and decree that the premises hereinafter  
59 described be sold at public auction, at the front door of the  
County Court House of Bernalillo County, to the highest  
and best bidder for cash; subject, however, to the exceptions, con-  
ditions and reservations hereinbefore mentioned; which said prem-  
ises are situate in the counties of Bernalillo and Sandoval, Territory  
of New Mexico, and described as follows, to-wit:

"A tract of land known as the Alameda Land Grant, bounded on  
the north by the ruins of an old pueblo; on the south by a small hill,  
which was the boundary of Luis Garcia; on the east the Rio Del  
Norte as it ran in the year 1710, near the eastern foothills, and on  
the west a prairie and the hills, and containing, according to the  
official survey thereof, 89,346 acres of land, as will more fully appear  
from the record of said survey on file in the office of the Surveyor-  
General of New Mexico, reference to which is made for more par-  
ticular description."

It is further ordered that Frank H. Moore be, and he hereby is,  
appointed as Special Master to make said sale, and is hereby directed  
to carry into effect this decree. And the said Special Master is hereby  
directed to first give public notice of said sale, and of the time, terms  
and place of sale, and description of the property to be sold, by pub-  
lication in some newspaper printed and published in the County of  
Bernalillo; which said notice shall be published in English once  
each week for four successive weeks, the last publication to be not

less than one week before the day of sale. And the said Special Master may continue said sale from time to time, as may appear to be for the best interests of said parties, without other or further notice, and may sell said premises as a whole or in two or more parts, as may seem to him most advisable. And upon the confirmation of the report of said Special Master, he shall execute and deliver to the purchaser of said premises so sold a proper deed of conveyance therefor. And the said Special Master will report his proceedings to and bring the money realized from said sale into court, to be distributed to the parties entitled thereto, under the order and direction of the court.

It is further ordered that Harry P. Owen, the referee heretofore appointed herein, be and he hereby is, allowed the sum of \$— for his services heretofore rendered as referee, to be taxed and paid as a part of the costs in this cause.

(Signed)

IRA A. ABBOTT,  
*Associate Justice, etc.*

Endorsed: "Filed in my office this Mar. 11, 1909. John Venable, Clerk."

And thereafter, on to-wit, the 4th day of January, 1910, there was filed in the office of the clerk of said court, in said cause, findings of fact by the court; which findings of fact are in the words and figures following, to-wit:

TERRITORY OF NEW MEXICO,  
*County of Bernalillo.*

In the District Court.

No. 7126.

VICENTA MONTOKA, Plaintiff,

vs.

UNKNOWN HEIRS OF FRANCISCO MONTES VIGIL et al., Defendants.

61 *Findings of Fact by the Court.*

The court makes the following findings of fact in the matter of the intervention of Candido G. Gonzales and others:

# I.

The interveners claim strips of land within the Alameda Grant very narrow in proportion to their length, most of them being only a few yards in width each, and extending from the Rio Grande west to the coja, or ridge, dividing the watershed of the Rio Grande from that of the Rio Puerco, and forming the western boundary of the grant, a distance of about sixteen miles. Most of them include land between the Rio Grande and the foothills at the west of the valley, which is adapted to cultivation, and the land extending from the

foothills to the ceja of the Rio Puerco, which is adapted to grazing only. Most of the interveners live on the easterly ends of the strips of land they claim, and cultivate such portions of the bottom lands between the river and foothills in the respective strips as they require. Near the river the land is what is termed bosque; that is land covered with a growth of brush, trees and wild grass, and is used for pasture. In the valley the strips of land are to some extent separated by fences, and to some extent the bosque is separated in that way from the cultivated lands. From the foothills west there are no fences, nor are there any fences at the western boundaries of the strips or of the grant. By stipulation between the parties the titles to the lands between the river and the foothills are not to be determined in this action, but that does not exclude the evidentiary bearing, if any, which the use, occupation and claims of possession and ownership of these lands by interveners respectively, so far as they appear in evidence, may have on their use, occupation and claims of possession respectively of the lands extending westerly from the foothills. The last named land bears a scanty growth of grass and other herbage and is without water, it being customary and necessary to have the animals pastured there go to the Rio Grande for water at intervals of three or four days, except for short and infrequent periods when their needs are supplied by rain or snow. By agreement, or common understanding, which has ripened into a general custom, the interveners and their predecessors in claim of ownership have used those westerly portions of the strips they claimed, in common with each other and with others claiming ownership in the grant, no one attempting to keep his animals exclusively on the land he claimed nor requiring others claiming ownership to keep their animals off such land. To some extent those who were not claiming ownership of any land within the grant pastured their animals on the portion of it in question west of the foothills and on the strips claimed by the interveners with the other animals pastured there, without objection by those who claimed the strips, but without their consent, except as they failed to take active measures to prevent such intrusion. This method of use was the one most convenient, economical and advantageous to the interveners and as to all the strips, except the northern one of Gonzales, the only practicable one because of the size and shape of the respective strips which would make the expense of fencing them greatly disproportionate to their value, the character and location of the land, the scantiness of herbage and the lack of water

62 upon it, and for no other reasons appearing in the evidence.

## II.

Jose Felipe Silva, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing forty-two and one-half varas in width from north to south, and bounded on the north by land claimed by the heirs of Dolores Gutierrez de Tafoya, and on the south by land claimed by Federico Gutierrez; which said strip corresponds to strip No. 73 of

the list of strips hereinafter referred to, and has been claimed by intervenor and his predecessors in title by virtue of certain unrecorded deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervenor and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

Jose Felipe Silva, one of the interveners, also claims for the Catholic Church a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 30 varas in width from north to south, and bounded on the north by land claimed by Pomposo Griego and on the south by land claimed by Octaviano Lopez, which strip corresponds to Strip No. 80 of the list of strips hereinafter referred to, and has been claimed by the intervenor and his predecessors in title by virtue of certain unrecorded deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa or upland extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervenor and his predecessors in title have lived in houses which they have built and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in Finding I of Fact herein.

Said intervenor, Jose Felipe Silva, claims another strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 61 varas in width from north to south, and bounded on the north by land claimed by Nestor Gonzales, and on the south by



land claimed by Jesus Maria Sandoval; which said strip corresponds to Strip No. 85 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain unrecorded deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action; and in connection with it, they used the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stocks, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

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## III.

Candido G. Gonzales, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 288 varas in width from north to south, and bounded on the north by land claimed by Conrado A. Gonzales, and on the south by land claimed by the heirs of Diego Sanchez; which said strip corresponds to strip No. 4 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain deeds of conveyance and devises purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built and have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

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Said intervener Candido G. Gonzales claims another strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 190 varas in width from north to south, and bounded on the north by land claimed by the heirs of Jose



Antonio Montoya, and on the south by land claimed by Conrado A. Gonzales; which said strip corresponds to strip No. 6 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain deeds of conveyance and devises purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

3. Said intervener, Candido G. Gonzales, also claims a strip of land situated within the Alameda Grant extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing forty-two and one-half varas in width from north to south, and bounded on the north by land claimed by Conrado A. Gonzales, and on the south by land claimed by Juan Montoya; which said strip corresponds to strip No. 16 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain deeds of conveyance and devises purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have used for pasture purposes such portions of said valley land as they required for their purposes and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

4. Said intervener, Candido G. Gonzales, also claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 222 varas in width from north to south, bounded on the north by land claimed by Juan Dominguez, Jesus Garcia and Justiniano Gutierrez, and on the south by lands claimed

by the heirs of Aniceto Armijo, et al.; which said strip corresponds to strip No. 37 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain deeds of conveyance and devises purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

5. Said intervener, Candido G. Gonzales, also claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 13 varas in width from north to south, and bounded on the north by land claimed by Adelaida Garcia and Guillermo Martinez, and on the south by land claimed by Bonifacio Carrillo and Damacio Rivera; which said strip corresponds to strip No. 57 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills, and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of this latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

Said intervener, Candido G. Gonzales, also claims a strip of land situated within the Alameda Land Grant, in the northern portion thereof, containing in width from north to south 1710 varas, and extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west; which said strip has been claimed by him and his predecessors in title for more than ten years next preceding the beginning of this action, by virtue of certain deeds of conveyance

71 and a devise; namely, Exhibits 28, 28-A and 28-B, purporting to convey an estate in fee simple thereto. Said instruments were admitted in evidence, and the foregoing part of this finding is based on them; but their legal effect is questioned by the complainants, and they are reported as evidence to be considered by the appellate court. Said land extends from the Rio Grande to the Ceja of the Rio Puerco, and the intervener and his predecessors in title have had such possession of it as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action. The Rio Grande now runs close to the foothills by this land, and there is practically no meadow land between the foothills and the river. Formerly there was a strip of bottom land between the Rio Grande and the foothills which formed a part of the tract herein claimed by the intervener, but neither he nor his predecessors in title, nor any other person so far as the evidence shows, ever cultivated, enclosed, erected buildings or lived upon any part of said tract, or made any use of it except for grazing, as set forth in Finding of Fact I.

The court further finds that the description of the real estate in said Exhibit No. 28 was originally of a tract of land 610 varas wide, and that said description was so altered as to describe the land as being 1610 varas wide; but the court is unable to find when said alteration was made, except that it was made after the original instrument was written, in a different ink, and was made some time prior to the year 1883.

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## IV.

Sofia Montoya and Francisco X. Montoya, interveners, claim a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 100 varas in width, from north to south, and bounded on the north by land claimed by Anastacio Garcia, and on the south by land claimed by Candido G. Gonzales; which said strip corresponds to strip No. 7 of the list of strips hereinafter referred to, and is claimed by interveners and their predecessors in title by virtue of certain deeds of conveyance and devises purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land they and their predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said interveners and their predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

Anastacio Garcia, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 40 varas in width from north to south, and bounded on the north by land claimed by Noyola Chaves, and on the south by land claimed by the heirs of Jose Antonio Montoya; which said strip corresponds to strip No. 8 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

Noyola Chaves, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 70 varas in width from north to south, and bounded on the north by land claimed by Jose Chaves, and on the south by land claimed by Anastacio Garcia; which said strip corresponds to strip No. 9 of the list of strips hereinafter referred to, and is claimed by intervener and her predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter lands she and her predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action. Deed to 40 varas not recorded.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and her predecessors in title have lived in houses which they built and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it,



they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

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## VII.

Jose Chaves, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 80 varas in width from north to south, and bounded on the north by land claimed by Concepcion Trujillo de Sandoval, and on the south by and claimed by Noyola Chaves; which said strip corresponds to strip No. 10 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain unrecorded deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

76 2. Said intervener, Jose Chaves, also claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 20 varas in width from north to south, and bounded on the north by land claimed by Felix Tafoya y Gonzales, and on the south by land claimed by Jose Gonzales y Montoya; which said strip corresponds to strip No. 20 of the list of strips hereinafter referred to, and is claimed by intervener by unrecorded deeds and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years

next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

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## VIII.

Borja C. De Martinez and Trinidad Candelario, interveners, claim a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 33 varas in width from north to south, and bounded on the north by land claimed by Juan Montoya, and on the south by land claimed by Anastacio Garcia and Concepcion Trujillo de Sandoval; which said strip corresponds to strip No. 13 of the list of strips hereinafter referred to, and is claimed by the interveners and their predecessors in title by virtue of certain unrecorded deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land they and their predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said interveners and their predecessors in title have lived in houses which they built and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in Finding I of Fact herein.

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## IX.

Juan Montoya, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 40 varas in width from north to south, and bounded on the north by land claimed by Candido G. Gonzales, and on the south by land claimed by the heirs of Felipe Candelaria; which said strip corresponds to strip No. 15 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain unrecorded deeds of conveyance and devises purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande

and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action, and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

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## X.

Felix Tafoya y Gonzales, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 19 varas in width from north to south, and bounded on the north by land claimed by Ambrosio Garcia, and on the south by land claimed by Jose Chaves, which said strip corresponds to strip No. 21 of the list of strips hereinafter referred to, and it is claimed by intervener and his predecessors in title by virtue of certain unrecorded deeds of conveyance and devises purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

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## XI.

Melquiades Martinez, one of the interveners, claims a strip of land within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 58 varas in width from north to south, and bounded on the north by land claimed by Andres Gallegos and on the south by land claimed by Dionicia Camacho, which said strip corresponds to strip No. 25 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain unrecorded deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described

in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

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## XII.

Andres Gallegos, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 57 varas in width from north to south, and bounded on the north by land claimed by Alejandro Sandoval; and on the south by land claimed by Melquiades Martinez; which said strip corresponds to strip No. 26 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain unrecorded deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

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## XIII.

Alejandro Sandoval, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 112 varas in width from north to south, and bounded on the north by land claimed by Victor Tafuya, and on the south by land claimed by Andres Gallegos; which said strip corresponds to strip No. 27 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom



land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

58 2. Said intervener, Alejandro Sandoval, claims another strip of land situated within the Alameda Land Grant, extending from the Lucero's Road on the east to the Ceja of the Rio Puerco on the west, and containing 40 varas in width from north to south, and bounded on the north by land claimed by Rafael Maestas, and on the south by land claimed by heirs of Gertrudes Carrillo; which said strip corresponds to strip No. 95 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Lucero Road and the foothills, said intervener and his predecessors in title have used such portions of said valley land as they required for grazing purposes and their stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

3. Said intervener, Alejandro Sandoval, also claims another strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 109 varas in width from north to south, and bounded on the north by land claimed by Jesus Maria Sandoval, and on the south by land claimed by heirs of Augustin Leal; which said strip corresponds to strip No. 106 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of

Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

4. Said intervener, Alejandro Sandoval, also claims another strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing  $113\frac{3}{4}$  varas in width from north to south, and bounded on the north by land claimed by Francisco Garcia, and on the south by land claimed by Juan Garcia; which  
85 said strip corresponds to strip No. 123 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

Said intervener Alejandro Sandoval also claims another strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing  $301\frac{1}{2}$  varas in width from north to south, and bounded on the north by land claimed by heirs of Mariano S. Otero, and on the south by land claimed by heirs of Francisco Garcia; which said strip corresponds to strip No. 125 of the list of strips hereinafter referred to, and is claimed by intervener and his  
86 predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Find-

ing 1 of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding 1 of Fact herein.

Said intervener Alejandro Sandoval also claims another strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 100 varas in width from north to south, and bounded on the north by lands claimed by Jesus Maria Sandoval and on the south by land claimed by Teofilo Perea, which said strip corresponds to strip No. 110 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain unrecorded deeds purporting to convey an estate in fee simple

thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the

87 Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the ceja of the Rio Puerco; of the latter he and his predecessors in title have had such possession as that described in Finding 1 of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it they used the portion of said strip extending from it to the Ceja of the Rio Puerco as set forth in said Finding I of Fact herein.

Said intervener, Alejandro Sandoval, also claims another strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 84 varas in width from north to south, and bounded on the north by land claimed by Augustin Alary, and on the south by land claimed by Jesus Maria Sandoval, which said strip corresponds to strip No. 112 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain devises and deeds of conveyance purporting to convey an estate in fee simple thereto for more than ten years next

preceding the beginning of this action, and consists of bot-

88 tom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

Said intervener, Alejandro Sandoval, also claims another strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing  $37\frac{1}{2}$  varas in width from north to south, and bounded on the north by land claimed by Juan Garcia and on the south by land claimed by Fernando Armijo, which said strip corresponds to strip No. 121 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain unrecorded deeds of conveyance and devises purporting to convey an estate in fee simple thereto, for more than ten years

89 next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein, for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

#### XIV.

Marcelina M. De Gonzales, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande to the east to the Ceja of the Rio Puerco on the west, and containing 56 varas in width from north to south, and bounded on the north by land claimed by Toribio Armijo, and on the south by land claimed by the heirs of Florencio Gonzales; which said strip corresponds to strip No. 30 of the list of strips hereinafter referred to, and is claimed by intervener and her predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee

90 simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land she and her predecessors in title have had such possession as that described in Finding I of Fact herein, for more than ten years next preceding the beginning of this action.



On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and her predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in Finding I of Fact herein.

#### XV.

Toribio Armijo, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 28 varas in width from north to south, and bounded on the north by land claimed by Rosa Salas de Gonzales, and on the south by land claimed by Marcelina M. de Gonzales; which said strip corresponds to strip No. 31 of the list of strips hereinafter referred

to, and is claimed by intervener and his predecessors in title  
 91 by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein, for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portion of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

#### XVI.

Heirs of Antonio Jose Gonzales, some of the interveners, claim a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 86½ varas in width from north to south, and bounded on the north by land claimed by Heirs of Abelina G. de Gonzales, and on the south by land claimed by Mariano Gonzales;

which said strip corresponds to strip No. 34 of the list of strips  
 92 hereinafter referred to, and is claimed by the interveners and their predecessors in title by virtue of certain unrecorded deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he

and their predecessors in title have had such possession as that described in Finding I of Facts herein, for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said interveners and their predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

### XVII.

Beatriz Gonzales de Heller and Teresa Gonzales de Sandoval, interveners, claim a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 100 varas in width from north to south, and bounded on the north by land claimed

93 by the heirs of Aniceto Armijo, and on the south by land claimed by the heirs of Antonio Jose Gonzales, which said strip corresponds to strip No. 35 of the list of strips hereinafter referred to, and is claimed by the intervener and his predecessors in title by virtue of certain deeds of conveyance and devises purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein, for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

### XVIII.

Jesus Garcia and Justiniano Gutierrez, interveners, claim a strip of land situated within the Alameda Land Grant, extending

94 from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 50 varas in width from north to south, and bounded on the north by land claimed by Juan Dominguez, and on the south by land claimed by Candido G. Gonzales; which said strip corresponds to strip No. 38 of the list of strips hereinafter referred to, and is claimed by interveners and their predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten

years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land they and their predecessors in title have had such possession as that described in Finding I of Fact herein, for more than ten years next preceding the beginning of this action. Unrecorded deeds for 20 varas.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said interveners and their predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

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## XIX.

Juan Dominguez, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 84 varas in width from north to south, and bounded on the north by land claimed by Antonio Ignacio Martinez, and on the south by land claimed by Jesus Garcia and Justiniano Gutierrez; which said strip corresponds to strip No. 39 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein, for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco as set forth in said Finding I of Fact herein.

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## XX.

Antonio Ignacio Martinez, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 25 varas in width from north to south, and bounded on the north by land of Leonor Tenorio de Gonzales, and on the south by land claimed by Juan Dominguez; which said strip corresponds to strip No. 40 of the list of strips hereinafter referred

to, and is claimed by intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein, for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they  
 97 used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

## XXI.

Leonor Tenorio de Gonzales, one of the interveners, claims a strip of land within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 55 varas in width from north to south, and bounded on the north by land claimed by Manuel Antonio Perea, and on the south by land claimed by Antonio Ignacio Martinez; which said strip corresponds to strip No. 41 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein, for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessor in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with  
 98 it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

## XXII.

Heirs of Manuel Antonio Perea, intervenors, claim a strip of land situated within the Alameda Land Grant extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 80 varas in width from north to south, and bounded on the north by lands claimed by Beatriz Gonzales de Heller and on the



south by land claimed by Leonor Tenorio de Gonzales, which said strip corresponds to strip No. 42 of the list of strips hereinafter referred to and is claimed by interveners and their predecessors in title by virtue of certain unrecorded deeds purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required  
 90 for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

Heirs of Manuel Antonio Perea, some of the interveners, claim a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 50 varas in width from north to south, and bounded on the north by the land claimed by Epimenio A. Miera and on the south by land claimed by Jose Leandro Garcia; which said strip corresponds to Strip No. 68 of the list of strips hereinafter referred to, and is claimed by the interveners and their predecessors in title by virtue of certain unrecorded deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills, and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land they and their predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said interveners and their predecessors in title have lived in houses which they built and they have built on, fenced and cultivated such portions of said valley land as they required  
 100 for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

### XXIII.

Beatriz Gonzales de Heller, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west,

and containing 33 varas in width from north to south, and bounded on the north by land claimed by heirs of Guadalupe Armijo, and on the south by land claimed by heirs of Manuel Antonio Perea; which said strip corresponds to strip No. 43 of the list of strips hereinafter referred to, and is claimed by intervener and her predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land she and her predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and her predecessors in title have lived in houses which they built, and they have built on, 101 fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

#### XXIV.

Abenicio Perea, successor to Vicenta Montoya, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 34 varas in width from north to south, and bounded on the north by land claimed by Rafaela Gutierrez de Gonzales, and on the south by land claimed by the heirs of Mariano S. Otero, which said strip corresponds to strip No. 46 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain deeds of conveyance and devises purporting to convey an estate in fee simple thereto for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio 102 Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

## XXV.

Rafaela Gutierrez de Gonzales, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 70 varas in width from north to south, and bounded on the north by land claimed by Guadalupe Gutierrez de Martinez, and on the south by land claimed by Abenicio Perea, successor to Vicenta Montoya, which said strip corresponds to strip No. 447 of the list of strips hereinafter referred to and is claimed by intervener and his predecessors in title by virtue of certain deeds of conveyance and devises purporting to convey an estate in fee simple thereto for more than ten years preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

103 On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it they used a portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

## XXVI.

Guadalupe Gutierrez de Martinez, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 33 varas in width from north to south, and bounded on the north by land claimed by Leopoldo Martinez, and on the south by land claimed by Rafaela Gutierrez de Gonzales, which said strip corresponds to strip No. 48 of the list of strips hereinafter referred to, and is claimed by intervener by unrecorded deeds and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or uplands, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

104 On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding

the beginning of this action; and in connection with it they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

### XXVII.

Carlos Martinez, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 22 varas in width from north to south, and bounded on the north by land claimed by Guadalupe Gutierrez de Martinez, and on the south by land claimed by Leopoldo Martinez, which said strip corresponds to strip No. 50 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that  
105 described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

### XXVIII.

Alejandro Gonzales, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing  $33\frac{1}{2}$  varas in width from north to south, and bounded on the north by land of Francisco Gonzales, and on the south land claimed by heirs of Dolores Griego; which said strip corresponds to strip No. 53 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding  
106 I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and



cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

## XXIX.

Francisco Gonzales, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 38 varas in width from north to south, and bounded on the north by land claimed by Julio Martinez, and on the south by land claimed by Alejandro Gonzales; which said strip corresponds to strip No. 54 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that  
107 described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

## XXX.

Julio Martinez, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 37 varas in width from north to south, and bounded on the north by land of Bonifacio Carrillo and Damasio Rivera, and on the south by land claimed by Francisco Gonzales; which said strip corresponds to strip No. 55 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the  
108 latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande

and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

## XXXI.

Bonifacio Carrillo, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 29½ varas in width from north to south, and bounded on the north by land claimed by Candido G. Gonzales, and on the south by land claimed by Julio Martinez; which said strip corresponds to strip No. 56 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west  
109 from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

## XXXII.

Luis Garcia, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 20 varas in width from north to south, and bounded on the north by land of Pomposo Griego, and on the south by land claimed by Donaciano Perea; which said strip corresponds to strip No. 61 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists  
110 of bottom land between the Rio Grande and the foothills and the mesa or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in

Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

### XXXIII.

Pomposo Griego, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 10 varas in width from north to south, and bounded on the north by land claimed by Jesus Maria Sandoval and Manuel Gonzales, and on the south by land claimed by Luis Garcia; which said strip corresponds to strip No. 62 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

Pomposo Griego, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Puerco on the west, and containing 30 varas in width from north to south, and bounded on the north by land claimed by heirs of Pedro Perea, and on the south by land claimed by Jose Felipe Silva, which said strip corresponds to strip No. 81 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the

latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

#### XXXIV.

Jose Leandro Garcia, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 33 varas in width from north to south, and bounded on the north by land claimed by Manuel Antonio Perea, and on the south by land claimed by Jesus Maria Sandoval; which said strip corresponds to strip No. 67 of the list of strips hereinafter referred to, and is claimed by the intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey

an estate in fee simple thereto, for more than ten years next  
113 preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops, and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

#### XXXV.

Delfino Gutierrez, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 25 varas in width from north to south, and bounded on the north by land claimed by Jose Leon Gutierrez, and on the south by land claimed by E. A. Miera; which said strip corresponds to strip No. 70 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple



114 thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stocks, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

## XXXVI.

Jose Leon Gutierrez, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 30 varas in width from north to south, and bounded on the north by land claimed by Frederico Gutierrez, and on the south by land claimed by Toefilo Gutierrez; which said strip corresponds to strip No. 71 of the list of strips hereinafter referred to, and is claimed by the intervener and his predecessors in title by virtue of certain unrecorded deeds of conveyance purporting

115 to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

Said intervener, Jose Leon Gutierrez, also claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 17 varas in width from north to south, and bounded on the north by land claimed by Octaviano Lopez, and on the south by land claimed by Erinea Cordova de Griego; which said strip corresponds to strip No. 73 of the list of strips hereinafter referred to, and is claimed by the intervener and his predecessors in title by

virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco.

Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

Said intervener, Jose Leon Gutierrez, also claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 50 varas in width from north to south, and bounded on the north by land claimed by Toefilo Persa, and on the south by land claimed by Jesus Maria Sandoval; which said strip corresponds to strip No. 108 of the list of strips hereinafter referred to, and is claimed by the intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

### XXXVII.

The heirs of Dolores Gutierrez De Tafoya, interveners, claim a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 18 varas in width from north to south, and bounded on the north by land claimed by Irene Cordova de Griego, and on the south by land claimed by Jose Felipe Silva; which said strip corresponds to strip No. 74 of the list of strips hereinafter re-

ferred to, and is claimed by interveners and their predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land  
 118 between the Rio Grande and the foothills and the mesa or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land they and their predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said interveners and their predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

### XXXVIII.

Irenea Cordova De Griego, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 60 varas in width from north to south, and bounded on the north by land claimed by Ignacio Gutierrez, and on the south by land claimed by the heirs of Dolores Gutierrez de Tafoya; which said strip corresponds to strip No. 75 of the list of strips hereinafter referred to, and is claimed by intervener and her predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more  
 119 than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land she and her predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and her predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

Said intervener, Erinea Cordova de Griego, also claims another strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 52 varas in width from north to south, and bounded on the north by land claimed by Jose Leon Gutierrez,

and on the south land claimed by Ignacio Gutierrez; which said strip corresponds to strip No. 77 of the list of strips hereinafter referred to, and is claimed by the intervener and her predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years  
 120 next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land she and her predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and her predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in Finding I of Fact herein.

### XXXIX.

Octaviano Lopez, one of the interveners, claims a strip of land situate within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 34 varas in width from north to south, and bounded on the north by land claimed by Jose Felipe Silva, and on the south by land claimed by Jose Leon Gutierrez; which said strip corresponds to strip No. 79 of the list of strips hereinafter referred to, and is claimed by the intervener and his predecessors in title  
 121 by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

### XL.

Leon Darras, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio



Grande on the east to the Ceja of the Rio Puerco on the west, and containing 95 varas in width from north to south, and bounded on the north by land claimed by Jesus Maria Sandoval, and on the south by land claimed by the heirs of Pedro Perea; which said strip corresponds to strip No. 83 of the list of strips hereinafter referred to, and is claimed by the intervener and his predecessors in title by virtue of certain deeds of conveyance pur-

122 porting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

## XLI.

Jose Griego, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 11½ varas in width from north to south, and bounded on the north by land claimed by the heirs of Tomas Montoya, and on the south by land claimed by Nestor Gonzales; which said strip corresponds

123 to strip No. 87 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

Said intervener, Jose Griego, claims another strip of land situated within the Alameda Land Grant, extending from the Rio Grande

on the east to the Ceja of the Rio Puerco on the west, and containing  $32\frac{1}{2}$  varas in width from north to south, and bounded on the north by land claimed by Secundino Sandoval, and on the south by land claimed by Jesus Maria Gutierrez; which said strip corresponds to strip No.  $92\frac{1}{2}$  of the list of strips hereinafter

124 referred to, and is claimed by intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

## XLII.

Heirs of Tomas Montoya, interveners, claim a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 126 varas in width from north to south, and bounded on the north by land claimed by Juan Cristobal Lopez, and on the south by land claimed by Nieves Montoya de Sandoval; which said strip corresponds to strip No. 88 of the list of strips herein-

125 after referred to, and is claimed by interveners and their predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land they and their predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said interveners and their predecessors in title have lived in houses which they built and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stocks, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

## XLIII.

Juan C. Lopez, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 75 varas in width from north to south, and bounded on the north by land claimed by Evaristo Griego, and on the south by land claimed by heirs of Tomas Montoya; which said strip  
126 corresponds to strip No. 89 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and her predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding of Fact herein.

## XLIV.

Albina Montoya de Sanchez, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 3½ varas in width from north to south, and  
127 bounded on the north by land claimed by Jesus Maria Gutierrez, and on the south by land claimed by Evaristo Griego; which said strip corresponds to strip No. 91 of the list of strips hereinafter referred to, and is claimed by intervener and her predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land she and her predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and her predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they

used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

#### XLV.

Jesus Maria Gutierrez, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 32½ varas in width from north to south, and bounded on the north by land claimed by Secundino Sandoval, and on the south by land claimed by Albina Montoya de Sanchez; which said strip corresponds to strip No. 92 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain unrecorded deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

#### XLVI.

Rafael Maestas, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 59 varas in width from north to south, and bounded on the north by land claimed by Angelo Salce, and on the south by land claimed by Alejandro Sandoval and heirs of Gertrudes Carrillo; which said strip corresponds to strip No. 96 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and



cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

## XLVII.

Angelo Salce and Luis Salce, two of the interveners, claim a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 100 varas in width from north to south, 130 and bounded on the north by land claimed by the heirs of Barbara Aragon, and on the south by land claimed by Rafael Maestas; which said strip corresponds to strip No. 97 of the list of strips hereinafter referred to, and is claimed by the interveners and their predecessors in title by virtue of certain unrecorded deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land they and their predecessors in title have had such possession as that described in Finding I of Fact herein, for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said interveners and their predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding of Fact herein.

## XLVIII.

Jose Manuel Sanchez, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 20 varas in width from north to south, 131 and bounded on the north by land claimed by Petronillo Martinez, and on the south by land claimed by heirs of Barbara Aragon de Montoya; which said corresponds to strip No. 99 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I

of Fact herein, for more than ten years next preceding the beginning of this action. Deeds to 12 varas unrecorded.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said finding I of Fact herein.

### XLIX.

Vicente Garcia, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the  
132 Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 22 varas in width from north to south, and bounded on the north by land of Nicanor Martinez, and on the south by land claimed by Petronillo Martinez; which said strip corresponds to strip No. 101 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein, for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

### L.

Nicanor Martinez, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the  
133 Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 18 varas in width from north to south, and bounded on the north by land claimed by Eugenio Vernier, and on the south by land claimed by Vicente Garcia; which said strip corresponds to strip No. 102 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or

upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

## LI.

Heirs of Augustin Leal, interveners, claim a strip of land situated within the Alameda Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and  
 134 containing 60 varas in width from north to south, and bounded on the north by land claimed by Alejandro Sandoval, and on the south by land claimed by Meliton Garcia; which said strip corresponds to strip No. 105 of the list of strips hereinafter referred to, and is claimed by the interveners and their predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land they and their predecessors in title have had such possession as that described in Finding I of Fact herein, for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said interveners and their predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in Finding I of Fact herein.

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## LII.

Teofilo Perea, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 50 varas in width from north to south, and bounded on the north by land claimed by Alejandro Sandoval, and on the south by land claimed by Jose Leon Gutierrez; which said strip corresponds to strip No. 109 of the list of strips hereinafter referred to, and is claimed by the intervener and his predecessors in title by

virtue of certain unrecorded deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein, for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in Finding I of Fact herein.

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LIII.

Augustin Alary, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 91½ varas in width from north to south, and bounded on the north by land claimed by Emilio Alary, and on the south by land claimed by Alejandro Sandoval; which said strip corresponds to strip No. 113 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein, for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

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LIV.

Emilio Alary, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 91½ varas in width from north to south, and bounded on the north by land of Jose Manuel Montoya, and on the south by land claimed by Augustin Alary; which said strip corresponds to



strip No. 114 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein, for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in Finding I of Fact herein.

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## LV.

Domingo Aria, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 81 varas in width from north to south, and bounded on the north by land claimed by Joe Pinna, and on the south by land claimed by Jose Manuel Montoya; which said strip corresponds to strip No. 116 of the list of strips hereinafter referred to, and is claimed by the intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein, for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in Finding I of Fact herein.

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## LVI.

Joe Pinna and Chas. Marra, two of the interveners, claim a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 61 varas in width from north to south, and bounded

on the north by land claimed by Augustin Pirisis, and on the south by land claimed by Domingo Aira; which strip corresponds to strip No. 117 of the list of strips hereinafter referred to, and is claimed by the interveners and their predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land they and their predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said interveners and their predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in Finding I of Fact herein.

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LVII.

Augustin Parisis, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing  $91\frac{1}{2}$  varas in width from north to south, and bounded on the north by land claimed by Elias Martinez, and on the south by land claimed by Joe Pino; which said strip corresponds to strip No. 118 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

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LVIII.

Elias Martinez, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio

Grande on the east to the Ceja of the Rio Puerco on the west, and containing 50 varas in width from north to south, and bounded on the north by land claimed by Fernando Armijo, and on the south by land claimed by Augustin Perisis; which said strip corresponds to strip No. 119 of the list of strips hereinafter referred to, and is claimed by the intervener and his predecessors in title by virtue of certain unrecorded deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock for more than ten years next preceding the beginning of this action; and in connection with it they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in Finding I of Fact herein.

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## LIX.

Juan Garcia and Santiago Armijo, two of the interveners, claim a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 200 varas in width from north to south, and bounded on the north by land claimed by Alejandro Sandoval, and on the south by Alejandro Sandoval; which said strip corresponds to strip No. 122 of the list of strips hereinafter referred to, and is claimed by the interveners and their predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land they and their predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said interveners and their predecessors in title have fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in Finding I of Fact herein.

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## LX.

Jose Ramon Tenorio, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio

Grande on the east to the Ceja of the Rio Puerco on the west, and containing  $15\frac{1}{2}$  varas in width from north to south, and bounded on the north by land claimed by Dolores Martinez Gutierrez, and on the south by land claimed by the heirs of Mariano S. Otero; which said strip corresponds to strip No. 127 of the list of strips hereinafter referred to, and is claimed by the intervener and his predecessors in title by virtue of certain unrecorded deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom lands to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have fenced and cultivated such portions of said valley land as they required for their purposes, crops and stocks, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in Finding I of Fact herein.

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LXI.

Jesus Tenorio, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 15 varas in width from north to south, and bounded on the north by land claimed by Petro Tenorio, and on the south by land claimed by Guillermo Tenorio; which said strip corresponds to strip No. 132 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.



## LXII.

Petra Tenorio, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 50 varas in width from north to south, and bounded on the north by land claimed by the heirs of Barbara Aragon, and on the south by land claimed by Jesus Tenorio; which said strip corresponds to strip No. 133 of the list of strips hereinafter referred to, and is claimed by intervener and her predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land she and her predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and her predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

## LXIII.

Candelario Santillanes, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 15 varas in width from north to south, and bounded on the north by land claimed by Benicio Martinez, and on the south by land claimed by the heirs of Barbara Aragon de Montoya; which said strip corresponds to strip No. 135 of the list of strips hereinafter referred to, and is claimed by the intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein, for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it,

they used the portion of said strip extending from it to the  
147 Ceja of the Rio Puerco, as set forth in Finding I of Fact  
herein.

Said intervener, Candelario Santillanes, also claims another strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 20 varas in width from north to south, and bounded on the north by land claimed by Jesus Maria Sandoval, and on the south by land claimed by Benicio Martinez; which said strip corresponds to strip No. 149 of the list of strips hereinafter referred to and is claimed by the intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in Finding I of Fact herein.

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LXIV.

Candelario Santillanes, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 54 varas in width from north to south, and bounded on the north by heirs of Jose Lucero, and on the south by land claimed by Jose Felipe Montoya; which said strip corresponds to strip No. 152 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preced-

ing the beginning of this action; and in connection with it they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

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## LXV.

Benicio Martinez, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 32 varas in width from north to south, and bounded on the north by land claimed by Santiago Gutierrez, and on the south by land claimed by Candelario Santillanes; which said strip corresponds to strip No. 136 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in Finding I of Fact herein.

150 Said intervener, Benicio Martinez, also claims another strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing  $12\frac{1}{2}$  varas in width from north to south, and bounded on the north by land claimed by Candelario Santillanes, and on the south by land claimed by Nester Sanchez; which said strip corresponds to strip No. 148 of the list of strips hereinafter referred to, and is claimed by the intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, the intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and

cultivated such portions of said valley land as they required for their purposes, crops and stock for more than ten years next preceding the beginning of this action; and in connection with it they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in Finding I of Fact herein.

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LXVI.

Santiago Gutierrez, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 20 varas in width from north to south, and bounded on the north by land claimed by Jose Felipe Montoya, and on the south by land claimed by Benicio Martinez; which said strip corresponds to strip No. 137 of the list of strips hereinafter referred to; and is claimed by the intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of the action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock for more than ten years next preceding the beginning of this action; and in connection with it they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in Finding I of Fact herein.

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LXVII.

Jose Felipe Montoya, one of the interveners, claims a strip of land situated with the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 85 varas in width from north to south, and bounded on the north by land claimed by Gabriela Tenorio de Chavez, and on the south by land claimed by Santiago Gutierrez; which said strip corresponds to strip No. 138 of the strips hereinafter referred to, and is claimed by the intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande

and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock for more than ten years next preceding the beginning of this action; and in connection with it they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in Finding I of Fact herein.

153 Said intervener, Jose Felipe Montoya, also claims another strip of land situated within the Alameda Land Grant extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 20 varas in width from north to south, and bounded on the north by land claimed by Candelario Santillanes, and on the south by land claimed by Jesus Maria Sandoval; which said strip corresponds to strip No. 151 of the list of strips hereinafter referred to, and is claimed by the intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein, for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock for more than ten years next preceding the beginning of this action; and in connection with it they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in Finding I of Fact herein.

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## LXVIII.

Eremita Chaves, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 18 varas in width from north to south, and bounded on the north by land claimed by Jose Leandro Garcia, and on the south by land claimed by Jose Felipe Montoya; which said strip corresponds to strip No. 139 of the list of strips hereinafter referred to, and is claimed by intervener and her predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land she and her predecessors in title have had such possession as that described in Finding I of Fact herein, for more than ten years next preceding the beginning of this action.



On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and her predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock for more than ten years next preceding the beginning of this action; and in connection with it they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

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## LXIX.

Elias Montoya, one of the interveners claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing  $22\frac{1}{2}$  varas in width from north to south, and bounded on the north by land claimed by Elias Tenorio, and on the south by land claimed by Jesus Maria Sandoval; which said strip corresponds to strip No. 143 of the list of strips hereinafter referred to, and is claimed by the intervener by unrecorded deed and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein, for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in Finding I of Fact herein.

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## LXX.

Elias Tenorio, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing  $12\frac{1}{2}$  varas in width from north to south, and bounded on the north by land claimed by Salome Montoya, and on the south by land claimed by Elias Montoya; which said strip corresponds to strip No. 144 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described

in Finding I of Fact herein, for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in Finding I of Fact herein.

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## LXXI.

Heirs of Jose Lucero, interveners, claim a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 17 varas in width from north to south, and bounded on the north by land claimed by Severiano Martinez, and on the south by land claimed by Candelario Santillanes; which said strip corresponds to strip No. 153 of the list of strips hereinafter referred to, and is claimed by the interveners, by unrecorded deed, and their predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land they and their predecessors in title have had such possession as that described in Finding I of Fact herein, for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said interveners and their predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in Finding I of Fact herein.

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## LXXII.

Francisco Lucero y Chaves, one of the interveners, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 17 varas in width from north to south, and bounded on the north by land claimed by Felicitas Montoya, and on the south by land claimed by Severiano Martinez; which said strip corresponds to strip No. 155 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the

bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein, for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein.

159 Said intervener, Francisco Lucero y Chaves, also claims another strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 20 varas in width from north to south, and bounded on the north by land claimed by Jesus Maria Sandoval, and on the south by land claimed by Felicitas Montoya; which said strip corresponds to strip No. 159 of the list of strip hereinafter referred to, and is claimed by the intervener, by unrecorded deed, and his predecessors in title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein, for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in Finding I of Fact herein.

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### LXXIII.

Francisco Lucero y Montoya, one of the interveners, claims two certain strips of land situated within the limits of the Alameda Land Grant, in the southern portion thereof, at the place commonly called San Mateo, one of said strips containing 16 varas in width from north to south, and extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, bounded on the north by land of Culasa (Nicolasa) Luna, and on the south by land of Rita Luna, and the other of said strips containing 16 varas in width from north to south, and extending from the Rio Grande on the east to the prairie of plains and hills on the west, bounded on the north by land of Pedro Candelaria, and on the south by land of Encarnacion Candalaria; which said strips have been claimed by intervener and

his predecessors in title for more than ten years next preceding the beginning of this action, by virtue of certain deeds of conveyance purporting to convey an estate in fee simple thereto, to-wit, by Exhibits 65, 65A and 65B. Said instruments were admitted in evidence and the foregoing part of this finding is based on them; but their legal effect is questioned by the complainant and they are reported as evidence to be considered by the appellate court. Said land extends from the Rio Grande to the plains and hills, and the intervener and his predecessors in title have had such possession of the same as that described in Finding I of Fact herein, for more than ten years next preceding the beginning of this action. The portion

161 of said strip between the Rio Grande and the foothills consists of bottom land and has been used by intervener and his predecessors in title for grazing purposes, and he has also used of the wood thereon occasionally, as required for his purposes, but neither he nor his predecessors in title, nor any other person so far as the evidence shows, ever cultivated, enclosed, erected buildings or lived upon any part of said tract, or made any use of it except for grazing, as set forth in Finding I of Fact herein.

## LXXIV.

The following list shows the names of the persons alleged to claim the various strips of land extending from the Rio Grande on the east to the Ceja of the Rio Puerco, or limits of the Grant, on the west, in the said Alameda Land Grant, and run from a point commencing with the first strip claimed by Jose Felipe Silva, and thence adjoining each other from south to north to and including the last strip claimed by Candido G. Gonzales, at or near the northern limits of the Alameda Land Grant.

Each strip is given a number in consecutive order, commencing with the first strip of said Jose Felipe Silva, and the number of varas claimed by the respective claimant, and the number given to said strip is the corresponding number referred to in the foregoing Findings II. to LXXIII. inc., so that the situation or location of the said strips hereinbefore referred to may more clearly appear by reference to the number of said strips as shown in said list, to-wit:

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Number.	Name.	Varas.
1.	Jose Felipe Silva .....	100
2.	Heirs of Santiago Sanches .....	400
3.	Heirs of Diego Sanchez .....	
4.	Candido G. Gonzales .....	288
5.	Conrado A. Gonzales .....	288
6.	Candido G. Gonzales .....	190
7.	Heirs of Jose Antonio Montoya .....	100
8.	Anastacio Garcia .....	40
9.	Noyola Chavez .....	70
10.	Jose Chavez .....	80
11.	Concepcion Trujillo de Sandoval .....	35½

Number.	Name.	Varas.
12.	Anastacio Garcia .....	45
13-14.	Heirs of Felipe Candelaria .....	50
	(Melquiades Martinez y Griego)	
15.	Juan Montoya .....	40
16.	Candido G. Gonzales .....	42 $\frac{1}{2}$
17.	Conrado A. Gonzales .....	42 $\frac{1}{2}$
18.	Mariano Gonzales .....	200
19.	Jose Gonzales y Montoya, heirs .....	92
20.	Jose Chaves .....	19
21.	Files Tafoya y Gonzales .....	19
22.	Ambrosia Garcia .....	40
23.	Luz Silva Gonzales .....	40
24.	Dionicio Camacho .....	58
25.	Melquiades Martinez y Griego .....	48
26.	Andres Gallegos .....	57
27.	Alejandro Sandoval .....	112
28.	Victor Tafoya .....	7
29.	Florencio Gonzales, heirs of .....	28
30.	Marcelina M. de Gonzales .....	56
31.	Toribio Armijo .....	28
32.	Rosa Salas de Gonzales .....	28
33.	Mariano Gonzales .....	28
34.	Antonio Jose Gonzales, heirs of .....	80
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35.	Avelina Garcia de Gonzales, heirs of .....	100
	(R. F. Heller is one of the heirs, his wife's name Beatriz Gonzales Heller.)	
36.	Ancilio Armijo, heirs, Teofila Gonzales is the widow	56
37.	Candido G. Gonzales .....	222
38.	Jesus Garcia .....	25
39.	Juan Dominguez .....	84
40.	Antonio Ignacio Martinez .....	25
41.	Leonor Tenorio de Gonzales .....	75
42.	Manuel Antonio Perea, heirs of, Francisco Lucero Montoya, one of the heirs .....	80
43.	R. F. Heller .....	43
	Beatrice Gonzales de Heller:	
44.	Guadalupe Armijo, heirs of, Guillermo Martinez, one of the heirs .....	22
45.	Mariano S. Otero, heirs .....	40
46.	Avenicio Perea, successor to Vicenta Montoya...	34
47.	Rafaela Gutierrez Gonzales .....	70
48.	Guadalupe Gutierrez de Martines .....	33
49.	Leopoldo Martine .....	44
50.	Carlos Martinez .....	22
51.	Guadalupe Gutierrez Martines, heirs .....	40
52.	Dolores Griego, heirs .....	60
53.	Alejandro Gonzales .....	33
54.	Francisco Gonzales .....	38



Number.	Name.	Varas.
55.	Julio Martinez .....	37
56.	Bonifacio Carillo .....	29
57.	Candido G. Gonzales .....	13
58.	Adelaida Garcia .....	148
59.	Bernabe C. de Baca .....	15
60.	Donaciano Perea .....	15
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61.	Luis Garcia .....	30
62.	Pomposo Griego .....	10
63.	Manuel Gonzales .....	37
64.	Abran Perea .....	60
65.	Jesus Perea .....	60
66.	Jesus Maria Sandoval .....	33
67.	Jose Leandro Garcia .....	33
68.	Manuel Antonio Perea, heirs .....	50
	Nazario Perea, one of the heirs.	
69.	Epimenio A. Miera .....	90
70.	Delfino Gutierrez .....	25
71.	Jose Leon Gutierrez .....	30
72.	Federico Gutierrez .....	7
73.	Jose Felipe Silva .....	46
74.	Dolores Gutierrez de Tafoya, heirs, Adron Jones, one of the heirs .....	18
75.	Erinia Cordova de Griego .....	60
76.	Ignacio Gutierrez .....	74
77.	Erinia Cordova de Griego .....	52
78.	Jose Leon Gutierrez .....	17
79.	Octaviana Lopez .....	34
80.	Jose Felipe Silva .....	30
81.	Pomposa Griego .....	30
82.	Pedro Perea, heirs of, Manuel Perea y Miera, one of the heirs .....	40
83.	Leon Darras .....	95
84.	Jesus Maria Sandoval .....	70
85.	Jose Felipe Silva .....	60
86.	Nestor Gonzales .....	20
87.	Nieves Montoya Sandoval, heirs of Jose Griego, one of the heirs .....	44
88.	Thomas Montoya, heirs of, Alvina Montoya de Sanchez, one of the heirs .....	126
89.	Juan Cristoval Lopez .....	75
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90.	Evaristo Griego .....	32½
91.	Alvina Montoya Sanchez .....	33
92.	Jesus Maria Gutierrez .....	32½
92½.	Jose Griego .....	32½
93.	Secundino Sandoval .....	43

Number.	Name.	Varas.
94.	Gertrudes Carillo, heirs; Julian Montoya, one of the heirs .....	44
95.	Alejandro Sandoval .....	40
96.	Rafael Maestas .....	60
97.	Angelo Salce .....	100
	(Angelo Salce and Luis Salce 100)	
98.	Barbara Aragon, heirs of; sisters of Loretto of Bernalillo are the heirs .....	215
99.	Jose Manuel Sanchez .....	20
100.	Petronilo Martinez .....	12
101.	Vicente Garcia .....	22
102.	Nicanor Martinez .....	18
103.	Eugenio Vernier .....	38
104.	Meliton Barcia .....	38
105.	Augustin Leal, heirs; Valentin Leal, one of the heirs .....	60
106.	Alejandro Sandoval .....	109
107.	Jesus Maria Sandoval .....	109
108.	Jose Leon Gutierrez .....	50
109.	Teofilo Perea .....	50
110.	Alejandro Sandoval .....	100
111.	Jesus Maria Sandoval .....	109
112.	Alejandro Sandoval .....	82½
113.	Augustin Alary .....	91½
114.	Emilia Alary .....	91½
115.	Jose Manuel Montoya .....	91½
116.	Domingo Aria .....	31
117.	Joe Pinna and Charles Marra .....	61
118.	Augustin Parissus .....	91½
119.	Elias Martinez .....	50
120.	Fernando Armijo .....	400
121.	Alejandro Sandoval .....	37½
122.	Juan Garcia .....	200
123.	Alejandro Sandoval .....	113
124.	Francisco Garcia, heirs; Uvaldo Garcia, one of the heirs .....	30
125.	Alejandro Sandoval .....	301½
126.	Mariano S. Otero .....	65
127.	Jose Ramon Tenorio .....	15
128.	Dolores Martinez de Gutierrez .....	25
129.	Josefa Gutierrez de Chaves, heirs; Petronilo Chaves, one of the heirs .....	95
130.	Dolores Martinez de Gutierrez .....	25
131.	Guillermo Tenorio .....	8
132.	Jesus Tenorio .....	15
133.	Petra Tenorio .....	50
134.	Barbara Aragon, heirs of; sisters of Loretto of Bernalillo are the heirs .....	35

Number.	Name.	Vares.
135.	Candelario Santillanes .....	15
136.	Benicio Martinez .....	42
137.	Santiago Gutierrez .....	20
138.	Jose Felipe Montoya .....	85
139.	Gravila Tenorio de Chaves .....	18
140.	Leandro Garcia .....	37½
141.	Victoriano Montoya, heirs of .....	37½
142.	Jesus Maria Sandoval .....	30
143.	Elias Montoya .....	21
144.	Elias Tenorio .....	35
145.	Salome Montoya .....	10
146.	Julia Gallegos .....	30
147.	Nestor Sanches .....	30
148.	Benicio Martinez .....	12½
149.	Candelario Santillanes .....	20
150.	Jesus Maria Sandoval .....	12
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151.	Jose Felipe Montoya .....	20
152.	Juan Santillanes, heirs; Candelario Santillanes, one of the heirs .....	34
153.	Jose Lucero, heirs; Francisco Lucero Montoya, one of the heirs .....	17
154.	Severiano Martinez .....	34
155.	Francisco Lucero Chaves .....	34
156.	Felicita Montoya .....	80
157.	Felix Montoya .....	20
158.	Juan Maria Montoya .....	10
159.	Francisco Lucero y Chavez .....	20
160.	Jesus Maria Sandoval, about .....	800
161.	Candido G. Gonzales, successor to Diego Antonio Montoya .....	1610
162.	Candido G. Gonzales, successor to Diego Antonio Montoya .....	100

## LXXV.

The subject of this suit is a tract of land situate in the counties of Bernalillo and Sandoval, territory of New Mexico, and known as the Alameda Land Grant; bounded on the north by the ruins of an old pueblo; on the south a small hill, which was the boundary of Luis Garcia; on the east by the Rio del Norte as it ran in the year 1710 near the eastern foothills, and on the west the prairie and hills; and containing, according to the official survey thereof, 89,346 acres of land, as will more fully appear from the record of said survey on file in the office of the Surveyor-General of New Mexico; reference to which is made for more particular description.

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## LXXVI.

That on the 2nd day of January, 1710, the Marquez de la Penuela, by authority of the King of Spain, and in accordance with the royal laws, usages and customs of said kingdom in force and effect in the province of New Mexico, granted the above described tract of land to Francisco Montes Vigil, in consideration of and as a reward for military service, and that juridical possession of said tract of land was on the 27th day of January, 1710, duly given to said grantee.

## LXXVII.

That the said grantee, Francisco Montes Vigil, afterwards, on the 18th day of July, 1712, conveyed the said tract of land to Captain Juan Gonzales, and that said grant and said conveyance were afterwards, on the 18th day of September, 1713, duly presented by said Captain Juan Gonzales to Juan Ysidro Flores Mogollon, the then Governor and Captain-General of the Province of New Mexico; which said grant and the transfer thereof to the said Captain Juan Gonzales was thereupon duly approved by the said Governor and Captain-General.

## LXXVIII.

That afterwards, in a suit regularly brought and pending in the United States Court of Private Land Claims at Santa Fe in the Territory of New Mexico, at the November term thereof, 1892, the said grant of land was duly confirmed to the heirs, assigns and legal representatives of the said Francisco Montes Vigil and his grantee, Captain Juan Gonzales, and declared to be and confirmed as a perfect grant.

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## LXXIX.

The court finds that the map filed in this cause, marked Exhibit A-1, shows with approximate correctness all that it purports to show relative to the Alameda Land Grant.

## LXXX.

Commencing at the south line of said Alameda Land Grant and measuring north there is a strip of land within said land grant 84.41 chains wide from north to south and extending from the Rio Grande to the western limits of said grant. No person lives upon said tract and there are no buildings, enclosures or improvements of any kind thereon, and no person so far as the evidence shows ever cultivated, enclosed, erected buildings or lived upon any part of said tract or made any use of it except for grazing, as set forth in Finding of Fact I; that beginning 26.20 chains north of said last mentioned tract is another vacant tract within said land grant, measuring 22.35 chains wide from north to south, and extending from the Rio Grande to the western limits of said land grant, and no person lives upon said tract and there are no buildings, enclosures or improvements of any kind thereon, and no person so far as the evidence

shows ever cultivated, enclosed, erected buildings or lived upon any part of said tract or made use of it, excepting for grazing, as set forth in Finding of Fact I; that 18 chains north of this last mentioned tract is another tract of land within said Alameda Land Grant measuring 56.95 chains from north to south and extending from the Rio Grande to the western limits of said land grant, that

170 no person lives upon said tract and there are no buildings, enclosures or improvements of any kind thereon, and no person, so far as the evidence shows, ever cultivated, enclosed, erected buildings or lived upon any part of said tract or made any use of it except for grazing, as set forth in Finding of Fact I; that 26 chains north of the last mentioned strip is another strip 5 chains wide from north to south, and extending from the Rio Grande to the western limits of said grant, that no person lives upon said tract and there are no buildings, enclosures or improvements of any kind thereon, and no person, so far as the evidence shows, ever cultivated, enclosed, erected buildings or lived upon any part of said tract or made any use of it except for grazing, as set forth in Finding of Fact I; that between the Jemez Road, running in a westerly direction across the mesa and the Arroyo Baranca is another strip 76.80 chains wide from north to south, and extending from the Rio Grande to the western limits of the grant. No person lives upon said tract and there are no buildings, enclosures or improvements of any kind thereon except that a fence was built within the past eighteen months and during the pendency of this suit fencing the south and west sides of the narrow valley adjoining the Rio Grande, and no person, so far as the evidence shows, ever cultivated, enclosed, erected buildings or lived upon any part of said tract or made any use of it except for grazing, as set forth in Finding of Fact I; that from the Arroyo Baranca to the north line of said grant, a distance of over one mile, there is no valley land; which said strip extends from the Rio Grande to the western limits of said grant. No person lives upon said tract, and there are no buildings, enclosures, 171 or improvements of any kind thereon, and no person, so far as the evidence shows, ever cultivated, enclosed, erected buildings or lived upon any part of said tract or made any use of it except for grazing, as set forth in Finding of Fact I.

## LXXXI.

That no one of the interveners by any instrument in writing introduced in evidence showed title in himself coming from Captain Juan Gonzales.

## LXXXII.

That Captain Juan Gonzales lived upon said Alameda Land Grant, and that there has always been a large number of the heirs of said Captain Juan Gonzales living within the boundaries of said Alameda Land Grant. A portion of the heirs of said Captain Juan Gonzales who lived within said boundaries were: Mariano Gonzales, who is now living upon said grant and has lived there all his life; his father, Jose Gonzales; his grandfather, Santiago Gonzales, and



his great grandfather, Juan Gonzales, who lived on said grant all their lives; also Juan Antonio Rodarte, who has lived on said grant all his life; also Merced Gonzales and her father, Miguel Gonzales, who have lived on said grant all their lives; also Fabiana Gonzales and her father, Jesus Gonzales, who have lived on said grant all their lives; also Candido G. Gonzales and his brother, Conrado A. Gonzales, and his father, Ignacio Gonzales, and his mother, Abelina Garcia de Gonzales; also his grandfather, Santiago Gonzales, and his great grandfather, Juan Gonzales; all of whom lived on said land grant all their lives; also Florencio Gonzales, before he went  
172 to Lincoln County; also Jose Gonzales and Manuel Gonzales and Sixta Gonzales, brothers and sister of Ignacio Gonzales, who lived on said grant all their lives.

## LXXXIII.

It appeared, however, and is so found, that from a time farther back than the memory of any witness extended, the greater part of the land within the limits of the grant has been claimed and occupied in strips, as set forth in Finding of Fact I, the land from the foothills to the Ceja of the Rio Puerco in common for pasturage, and the bottom lands generally by those claiming the ownership of them separately, as set forth in said finding. It did not appear that the heirs of Captain Juan Gonzales or any of them living within the boundaries of the grant had ever claimed or asserted any right to or interest in any portion of said land grant except such strips as they claimed respectively until and except as appears from warranty deed from Juan Antonio Rodarte to A. B. McMillen for and undivided one-twenty-fourth part of said grant, dated January 8th, 1907, and by warranty deed from Merced Gonzales de Romero and Fabiana Gonzales for the undivided one-fifty-sixth part of said grant, dated February 27th, 1907; and it did not appear that they or any of them occupied or used any portion of said grant except as others within the grant occupied and used the strips they claimed, the bottom lands in severalty and the grazing lands in common, as set forth in said Finding of Fact I.

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## LXXXIV.

That the heirs of Captain Juan Gonzales are shown in the genealogy filed in this cause by Harry P. Owen, referee, reference to which is hereby made.

## LXXXV.

It does not appear from the evidence that the plaintiff or her co-tenants have brought any suit affecting the Alameda Land Grant, except the suit in this cause for partition.

## LXXXVI.

That the foregoing findings are all the facts shown by the evidence

relative or material to the claim of interveners represented by George S. Klock and A. A. Sedillo.

Done this January 4, 1910.

(Signed)

IRA A. ABBOTT,  
*Associate Justice, etc.*

Upon the foregoing findings of fact the court concludes as a matter of law that each and every intervener is entitled in severalty and in fee simple absolute to the portion and portions of land described in the finding of fact relating thereto, to which reference is made for further definition and identification, and that the plaintiff herein and the heirs of Captain Juan Gonzales are barred thereof forever; to which conclusion of law the plaintiff and the defendants represented by A. B. McMillen except.

Done this January 4, 1910.

(Signed)

IRA A. ABBOTT,  
*Associate Justice, etc.*

174      Endorsed: "Filed in my office this January 4, 1910.  
John Venable, Clerk.

And thereafter, on to-wit, the 4th day of January, 1910, there was entered of record and filed in the office of the clerk of said court, in said cause, final decree on intervention of Candido G. Gonzales and others, which said final decree on said intervention is in the words and figures following, to-wit:

In the District Court of the County of Bernalillo, Territory of New Mexico.

No. 7128.

VICENTA MONTOYA, Plaintiff,

vs.

UNKNOWN HEIRS OF FRANCISCO MONTES VIGIL, Deceased, et al.,  
Defendants.

*Final Decree on Intervention of Candido G. Gonzales and Others.*

This cause having heretofore come on to be heard upon the intervention of Candido G. Gonzales and all other interveners represented by George S. Klock and A. A. Sedillo, and the pleadings, proceedings, exhibits and evidence in said cause, was argued by counsel and submitted to the court.

Whereupon, the court being fully advised in the premises, adjudges and decrees as follows:

That the intervener, Jose Felipe Silva, is the owner in fee simple absolute and in severalty of the following described strips, tracts and parcels of land situate within the limits of the Alameda Land Grant and bounded and described as follows:

Containing 42½ varas in width from north to south, and in

length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by heirs of Dolores Gutierrez de Tafuya, and on the south by land claimed by Federico Gutierrez; and which said strip corresponds to strip No. 73 in the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

Containing 61 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Nestor Gonzales, and on the south by land claimed by Jesus Maria Sandoval; and which said strip corresponds to strip No. 85 in the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

That the Catholic Church of Los Corrales is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 30 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Pomposo Griego, and on the south by land claimed by  
176 Octaviano Lopez; and which strip corresponds to strip No.

80 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Candido G. Gonzales, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 288 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Conrado A. Gonzales, and on the south by land claimed by the heirs of Diego Sanchez and which said strip corresponds to the strip No. 4 of the list of strips referred to in the Findings of Fact in the said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Candido G. Gonzales, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 190 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by the heirs of Jose Antonio Montoya, and on the south by land claimed by Conrado A. Gonzales; and which said strip corresponds to strip No. 6 of the list of strips referred to in the Findings  
177 of Fact in the said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Candido G. Gonzales, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 421½ varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Conrado A. Gonzales, and on the south by land claimed by Juan Montoya; and which said strip corresponds to strip No. 18 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Candido G. Gonzales, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 222 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Juan Dominguez, Jesus Garcia and Justiniano Gutierrez, and on the south by lands claimed by the heirs of Aniceto Armijo, et al.; and which said strip corresponds to strip No. 37 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Candido G. Gonzales, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 13 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Adelaida Garcia and Guillermo Martinez, and on the south by land claimed by Bonifacio Carrillo and Damacio Rivera; and which said strip corresponds to strip No. 57 of the list of strips referred to in the Findings of Fact in said cause annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Candido G. Gonzales, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 1710 varas from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by the limits of the Alameda Land Grant, and on the south by land claimed by Jesus Maria Sandoval; and which said strip corresponds to strip No. 161-162 of the



list of strips referred to in the Findings of Fact in said cause  
179 annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the interveners,

Sofia Montoya and Francisco X. Montoya, are the owners in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 100 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Anastacia Garcia and on the south by land claimed by Candido G. Gonzales, and which said strip corresponds to strip No. 7 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Anastacia Garcia, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 40 varas in width from north to south, and bounded on the north by land claimed by Noyola Chavez, and on the south by land claimed by the heirs of Jose Antonio Montoya, and which  
180 said strip corresponds to strip No. 8 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Noyola Chavez, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 70 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Jose Chavez, and on the south by land claimed by Anastacio Garcia; and which said strip corresponds to strip No. 9 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Jose Chavez, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 80 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Concepcion Trujillo de Sandoval, and on the south by land  
181 claimed by Noyola Chavez; and which said strip corresponds to strip No. 10 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.



It is further considered, adjudged and decreed that the intervener, Jose Chaves, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 20 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Felix Tafuya y Gonzales, and on the south by land claimed by Jose Gonzales y Montoya; and which said strip corresponds to strip No. 20 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the interveners, Borja C. de Martinez and Trinidad Candelario, are the owners in fee simple absolute and in severalty of the following described strip, tract and parcel of land, situate within the limits of the Alameda

Land Grant, bounded and described as follows:

182     Containing 33 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Juan Montoya, and on the south by land of Anastacio Garcia and Concepcion Trujillo de Sandoval; and which said strip corresponds to strip No. 13 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Juan Montoya is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 40 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Candido G. Gonzales, and on the south by land claimed by the heirs of Felipe Candelaria; and which said strip corresponds to strip No. 15 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Felix Tafuya y Gonzales, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel

183     of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 19 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Ambrosio Garcia and on the south by land claimed by Jose Chaves; and which said strip corresponds to strip No. 21 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Melquiades Martinez, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 58 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Andres Gallegos, and on the south by land claimed by Deonicia Comacho; and which said strip corresponds to strip No. 25 of the list of strips referred to in the Findings of Fact and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener,

184 Andres Gallegos is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 57 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Alejandro Sandoval, and on the south by land claimed by Melquiades Martinez; and which said strip corresponds to strip No. 26 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Alejandro Sandoval, is the owner in fee simple absolute and in severalty of the following described strips, tracts and parcels of land, situate within the limits of the Alameda Land Grant, bounded and described as follows:

A strip containing 112 veras in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Victor Tafoya and on the south by land claimed by Andres Gallegos; and which said strip corresponds to strip No. 27 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

185 A strip containing 40 varas in width from north to south, and in length extending from the Luceras Road on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Rafael Maestas, and on the south by land claimed by the heirs of Gertrudes Carrillo; and which said strip corresponds to strip No. 95 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

A strip containing 109 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Jesus Maria Sandoval, and on the south by land claimed

by the heirs of Augustin Leal; and which said strip corresponds to strip No. 106 of the list of strips referred to in the Findings of Fact and in the list of strips annexed hereto and made a part of this decree.

A strip containing  $113\frac{3}{4}$  varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco, and bounded on the north by land claimed by Francisco Garcia, and on the south by land claimed by Juan Garcia; and which said strip corresponds to strip No. 123 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

A strip containing  $301\frac{1}{2}$  varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by the heirs of Mariano S. Otero, and on the south by land claimed by heirs of Francisco Garcia; and which said strip corresponds to strip No. 125 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

A strip containing 100 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Jesus Maria Sandoval, and on the south by land claimed by Teofilo Perea; and which said strip corresponds to strip No. 110 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

A strip containing 84 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Augustin Alary, and on the south by land claimed by Jesus Maria Sandoval; and which said strip corresponds to strip No. 112 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

A strip containing  $371\frac{1}{2}$  varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Juan Garcia, and on the south by land claimed by Fernando Armijo; and which said strip corresponds to strip No. 121 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

187 It is further considered, adjudged and decreed that the intervener, Marcelina N. De Gonzales, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 56 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Toribio Armijo, and on the south by land claimed by the heirs of

Florencio Gonzales; and which said strip corresponds to strip No. 30 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Toribio Armijo, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 28 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Rosa Salas y Gonzales, and on the south by land claimed by Marcelina M. de Gonzales; and which said strip corresponds to strip No.

31 of the list of strips referred to in the Findings of Fact in 188 said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the interveners, Heirs of Antonio Jose Gonzales, are the owners in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing  $86\frac{1}{2}$  varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by heirs of Abelina G. de Gonzales, and on the south by land claimed by Mariano Gonzales; and which said strip corresponds to strip No. 34 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the interveners, Beatriz Gonzales De Heller and Teresa Gonzales De Sandoval, are the owners in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 100 varas in width from north to south, and 189 in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by the heirs of Aniceto Armijo, and on the south by land claimed by the heirs of Antonio Jose Gonzales; and which said strip corresponds to strip No. 35 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the interveners, Jesus Garcia and Justiniano Gutierrez, are the owners in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 50 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by



Juan Dominguez, and on the south by land claimed by Candido G. Gonzales; and which said strip corresponds to strip No. 38 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervenor, Juan Dominguez, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

190     Containing 84 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Antonio Ignacio Martinez, and on the south by land claimed by Jesus Garcia and Justianiano Gutierrez; and which strip corresponds to strip No. 39 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervenor, Antonio Ignacio Martinez, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 25 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Leonor Tenorio de Gonzales, and on the south by land claimed by Juan Dominguez; and which said strip corresponds to strip No. 40 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervenor, Leonor Tenorio de Gonzales, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 55 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Manuel Antonio Perea, and on the south by land claimed by Antonio Ignacio Martinez; and which said strip corresponds to strip No. 41 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervenors, Heirs of Manuel Antonio Perea, are the owners in fee simple absolute and in severalty of the following described strips, tracts and parcels of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

A strip containing 80 varas in width from north to south, and



in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Beatriz Gonzales de Heller, and on the south by land claimed by Leonor Tenorio de Gonzales; and which said strip corresponds to strip No. 42 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto 192 and made a part of this decree.

A strip containing 50 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Epimenio A. Miera, and on the south by land claimed by Jose Leandro Garcia; and which said strip corresponds to strip No. 68 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervenor, Beatriz Gonzales de Heller, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 33 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by heirs of Guadalupe Armijo, and on the south by land claimed by heirs of Manuel Antonio Perea; and which said strip corresponds to strip No. 43 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervenor, Abelico Perea, is the owner in fee simple absolute 193 and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 34 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Rafaela Gutierrez de Gonzales, and on the south by land claimed by the heirs of Mariano S. Otero; and which said strip corresponds to strip No. 46 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervenor, Rafaela Gutierrez de Gonzales, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 70 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Guadalupe Gutierrez de Martinez, and on the south by land claimed by Abenicio Perea, successor to Vicente Montoya; and which said

strip corresponds to strip No. 47 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Guadalupe Gutierrez de Martinez, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 33 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Leopoldo Martinez and on the south by land claimed by Rafaela Gutierrez de Gonzales; and which said strip corresponds to strip No. 48 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Carlos Martinez, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 22 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Guadalupe Gutierrez de Martinez, and on the south by land claimed by Leopoldo Martinez; and which said strip corresponds to strip No. 50 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Alejandro Gonzales, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 33½ varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Francisco Gonzales, and on the south by land claimed by Dolores Griego; and which said strip corresponds to strip No. 53 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Francisco Gonzales, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 38 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Julio Martinez, and on the south by land claimed

by Alejandro Gonzales; and which said strip corresponds to strip No. 54 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Julio Martinez, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 37 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Bonifacio Carrillo and Damacio Rivera and on the south by land claimed by Francisco Gonzales; and which said strip corresponds to strip No. 55 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Bonifacio Carrillo, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

197     Containing  $29\frac{1}{2}$  varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Candido G. Gonzales, and on the south by land claimed by Julio Martinez; and which said strip corresponds to strip No. 56 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Luis Garcia, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 20 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Pomposo Griego, and on the south by land claimed by Donaciano Perea; and which said strip corresponds to strip No. 61 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Pomposo Griego, is the owner in fee simple absolute and in severalty of the following described strips, tracts and parcels of land  
198     situate within the limits of the Alameda Land Grant, bounded and described as follows:

A strip containing 10 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Jesus Maria Sandoval and Manuel Gonzales, and on the south by

land claimed by Luis Garcia; and which said strip corresponds to strip No. 62 of the list of strips in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

A strip containing 30 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by heirs of Pedro Perea, and on the south by land claimed by Jose Felipe Silva; and which said strip corresponds to strip No. 81 of the list of strips in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Jose Leandro Garcia, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 33 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Manuel Antonio Perea, and on the south by land claimed by Jesus Maria Sandoval; and which said strip corresponds to strip No. 67 of the list of strips in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Delfino Gutierrez, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 25 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Jose Leon Gutierrez, and on the south by land claimed by E. A. Miera; and which said strip corresponds to strip No. 70 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Jose Leon Gutierrez, is the owner in fee simple absolute and in severalty of the following described strips, tracts and parcels of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

200 A strip containing 30 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Federico Gutierrez, and on the south by land claimed by Teofilo Gutierrez; and which said strip corresponds to strip No. 71 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

A strip containing 17 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of



the Rio Puerco on the west, and bounded on the north by land claimed by Octaviano Lopez, and on the south by land claimed by Erinea Cordova de Griego; and which said strip corresponds to strip No. 78 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

A strip containing 80 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Teofilo Perea and on the south by land claimed by Jesus Maria Sandoval; and which said strip corresponds to strip No. 108 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered adjudged and decreed that the interveners, Heirs of Dolores Gutierrez de Tafoya, are the owners in fee simple absolute and in severalty of the following described strip, 201 tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 18 varas in width for north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Irene Cordova de Griego, and on the south by land claimed by Jose Felipe Silva; and which said strip corresponds to strip No. 74 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Irene Cordova de Griego, is the owner in fee simple absolute and in severalty of the following described strips, tracts and parcels of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

A strip containing 60 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Ignacio Gutierrez, and on the south by land claimed by Dolores Gutierrez; and which said strip corresponds to strip No. 75 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

A strip containing 52 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land 202 claimed by Jose Leon Gutierrez, and on the south by land claimed by Ignacio Gutierrez; and which said strip corresponds to strip No. 77 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Octaviano Lopez, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within



the limits of the Alameda Land Grant, bounded and described as follows:

Containing 34 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Jose Felipe Silva, and on the south by land claimed by Jose Leon Gutierrez; and which said strip corresponds to strip No. 79 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Leon Darras, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

203 Containing 95 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Jesus Maria Sandoval, and on the south by land claimed by the heirs of Pedro Perea; and which said strip corresponds to strip No. 83 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Jose Griego, is the owner in fee simple absolute and in severalty of the following described strips, tracts and parcels of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

A strip containing  $11\frac{1}{2}$  varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by heirs of Tomas Montoya, and on the south by land claimed by Nestor Gonzales; and which said strip corresponds to strip No. 87 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

A strip containing  $32\frac{1}{2}$  varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Secundino Sandoval, and on the south by land claimed by Jesus Maria Gutierrez; and which said strip corresponds to strip No. 92 $\frac{1}{2}$  of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

204 It is further considered, adjudged and decreed that the interveners, Heirs of Tomas Montoya, are the owners in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 126 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by

Juan Cristobal Lopez, and on the south by land claimed by Nieves Montoya de Sandoval; and which said strip corresponds to strip No. 88 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervenor, Juan C. Lopez, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 75 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land  
205 claimed by Evaristo Griego, and on the south by land claimed by heirs of Tomas Montoya; and which said strip corresponds to strip No. 89 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervenor, Albina Montoya de Sanchez, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 33 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Jesus Maria Gutierrez, and on the south by land claimed by Evaristo Griego; and which strip corresponds to strip No. 91 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervenor,

Jesus Maria Gutierrez, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 32½ varas in width from north to south, and in length extending from the Rio Grande on the east to the  
206 Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Secundino Sandoval, and on the south by land claimed by Albina Montoya de Sanchez; and which said strip corresponds to strip No. 92 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervenor,

Rafael Maestas, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 59 varas in width from north to south, and in length

extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Angelo Salce, and on the south by land claimed by Lejandro Sandoval and heirs of Gertrudes Carrillo; and which said strip corresponds to strip No. 96 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the interveners,

Angelo Salce and Luis Salce, are the owners in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 100 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by the heirs of Barbara Aragon, and on the south by land claimed by Rafael Maestas; and which said strip corresponds to strip No. 97 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener,

Jose Manuel Sanchez, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 20 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Petronillo Martinez, and on the south by land claimed by heirs of Barbara Aragon de Montoya; and which said strip corresponds to strip No. 99 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener,

208 Vicente Garcia, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 22 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Nicanor Martinez, and on the south by land claimed by Petronillo Martinez, and which said strip corresponds to strip No. 101 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Nicanor Martinez, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate

within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 18 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Eugenio Vernier, and on the south by land claimed by Vicente Garcia; and which said strip corresponds to strip No. 102 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

209 It is further considered, adjudged and decreed that the interveners,

Heirs of Augustin Leal, are the owners in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 60 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Alejandro Sandoval, and on the south by land claimed by Meliton Garcia; and which said strip corresponds to strip No. 105 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Teofilo Perea, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 50 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Alejandro Sandoval, and on the south by land claimed by Jose Leon Gutierrez; and which said strip corresponds to strip No. 109 of the list of strips referred to in the Findings of fact in said cause  
210 and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Augustin Alary, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 91½ varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Emilio Alary, and on the south by land claimed by Alejandro Sandoval; and which said strip corresponds to strip No. 113 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Emilio Alary, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate



within the limits of the Alameda Land Grant bounded and described as follows:

Containing  $91\frac{1}{2}$  varas in width from north to south and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west and bounded on the north by land claimed by Jose Manuel Montoya and on the south by land claimed  
211 by Augustin Alary; and which strip corresponds to strip No. 114 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Domingo Aira, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land within the limits of the Alameda Land Grant bounded and described as follows:

Containing 31 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco and bounded on the north by land claimed by Joe Pinna and on the south by land claimed by Jose Manuel Montoya; and which said strip corresponds to strip No. 116 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Joe Pinna and Charles Marra, are the owners in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant bounded and described as follows:

Containing 61 varas in width from north to south and in  
212 length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west and bounded on the north by land claimed by Augustin Parisi and on the south by land claimed by Domingo Aira; and which said strip corresponds to strip No. 117 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Augustin Parisi, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant bounded and described as follows:

Containing  $91\frac{1}{2}$  varas in width from north to south and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west and bounded on the north by land claimed by Elias Martinez and on the south by land claimed by Joe Pinna; and which said strip corresponds to strip No. 118 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Elias Martinez, is the owner in fee simple absolute, and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant bounded and described as follows:



213      Containing 50 varas in width from north to south and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west and bounded on the north by land claimed by Fernando Arijo and on the south by land claimed by Augustin Parisi; and which strip corresponds to strip No. 119 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the interveners, Juan Garcia and Santiago Armijo, are the owners in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant bounded and described as follows:

Containing 200 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Alejandro Sandoval and on the south by land claimed by Alejandro Sandoval; and which said strip corresponds to strip No. 122 of the list of strips referred to in the Findings of Fact in said cause, and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Jose Ramon Tenorio, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of  
214      land situate within the limits of the Alameda Land Grant bounded and described as follows:

Containing 50½ varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west and bounded on the north by land claimed by Dolores Martinez de Gutierrez and on the south by land claimed by heirs of Mariano S. Otero; and which said strip corresponds to strip No. 127 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Jesus Tenorio, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant bounded and described as follows:

Containing 15 varas in width from north to south and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west and bounded on the north by land claimed by Petra Tenorio, and on the south by land claimed by Guillermo Tenorio; and which said strip corresponds to strip No. 132 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the  
215      intervener, Petra Tenorio, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 50 varas in width from north to south and in length

extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west and bounded on the north by land claimed by heirs of Barbara Aragon and on the south by the land claimed by Jesus Tenorio; and which said strip corresponds to strip No. 133 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervenor, Candelario Santillanes, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant bounded and described as follows:

A strip containing 15 varas in width from north to south and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west and bounded on the north by land claimed by Benicio Martinez and on the south by land claimed by heirs of Barbara Aragon de Montoya; and which said strip corresponds to strip No. 135 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

216 A strip containing 20 varas in width from north to south and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west and bounded on the north by land claimed by Jesus Maria Sandoval and on the south by land claimed by Benicio Martinez; and which said strip corresponds to strip No. 149 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

A strip containing 54 varas in width from north to south and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land of heirs of Jose Lucero and on the south by land claimed by Jose Felipe Montoya; and which said strip corresponds to strip No. 152 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervenor, Benicio Martinez, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant bounded and described as follows:

A strip containing 32 varas in width from north to south and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Santiago Gutierrez and on the south by land claimed by Candelario Santillanes; and which said strip corresponds to

217 strip No. 136 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

A strip containing  $12\frac{1}{2}$  varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Candelario Santillanes, and on the south by land

claimed by Nestor Sanchez; and which said strip corresponds to strip No. 148 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Santiago Gutierrez, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant bounded and described as follows:

Containing 20 varas in width from north to south and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Jose Felipe Montoya, and on the south by land claimed by Benicio Martinez and which said strip corresponds to strip No. 137 of the list of strips referred to in the Findings of Fact and in said cause and in the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the  
218 intervener, Jose Felipe Montoya, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant bounded and described as follows:

A strip containing 85 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Gabriela Tenorio de Chavez, and on the south by land claimed by Santiago Gutierrez; and which said strip corresponds to strip No. 138 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree.

A strip containing 20 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Candelario Santillanes, and on the south by land claimed by Jesus Maria Sandoval; and which said strip corresponds to strip No. 151 of the list of strips referred to in the Findings of Fact in said cause and of the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Eremita Chavez, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant bounded and described as follows:

219 Containing 18 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Jose Leandro Garcia, and on the south by land claimed by Jose Felipe Montoya; and which said strip corresponds to strip No. 139 of the list of strips referred to in the Findings of Fact in said cause and of the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener,

Elias Montoya, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant bounded and described as follows:

Containing  $22\frac{1}{2}$  varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Elias Tenorio, and on the south by land claimed by Jesus Maria Sandoval; and which said strip corresponds to strip No. 143 of the list of strips referred to in Findings of Fact in said cause and of the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Elias Tenorio, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant bounded  
220 and described as follows:

Containing  $12\frac{1}{2}$  varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Salome Montoya, and on the south by land claimed by Elias Montoya, and which said strip corresponds to strip No. 144 of the list of strips referred to in the Findings of Fact in said cause and of the list of the strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Heirs of Jose Lucero, are the owners in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant bounded and described as follows:

Containing 17 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Severiano Martinez and on the south by land claimed by Candelario Santillanes; and which said strip corresponds to strip No. 153 of the list of strips referred to in the Findings of Fact in said cause and of the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Francisco Lucero y Chavez, is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant bounded and described as follows:

A strip containing 17 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Felicitas Montoya, and on the south by land claimed by Severiano Martinez; and which said strip corresponds to strip No. 155 of the list of strips referred to in the Findings of Fact in said cause and of the list of strips annexed hereto and made a part of this decree.



A strip containing 20 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Jesus Maria Sandoval, and on the south by land claimed by Felicitas Montoya; and which said strip corresponds to strip No. 159 of the list of strips referred to in the Findings of Fact in said cause, and of the list of strips annexed hereto and made a part of this decree.

It is further considered, adjudged and decreed that the intervener, Francisco Lucero y Montoya, is the owner in fee simple absolute and in severalty of the following described strips, tracts and parcels of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

222 A strip containing 16 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Culasa (Nicolasa) Luna, and on the south by land claimed by Rita Luna; and which said strip is situated in the southern portion of said Alameda Land Grant at the place commonly called San Mateo.

A strip containing 16 varas in width from north to south, and in length extending from the Rio Grande on the east to the prairie or plains and hills on the west, bounded on the north by land claimed by Pedro Candelaria and on the south by land claimed by Encarnacion Candelaria; and which said strip is situated in the southern portion of said Alameda Land Grant at the place commonly called San Mateo.

The following is the list of strips referred to in the foregoing decree as annexed thereto and made a part thereof, to wit:

Number.	Name.	Varas.
1.	Jose Felipe Silva.....	100
2.	Santiago Sanches, heirs (Tircio Bazan).....	100
3.	Diego Sanches, heirs.....	
4.	Candido Gonzales.....	288
5.	Conrado A. Gonzales.....	288
6.	Candido G. Gonzales.....	190
7.	Jose Antonio Montoya, heirs.....	100
8.	Anastacio Garcia.....	40
9.	Noyola Chavez.....	70
10.	Jose Chavez.....	80
11.	Concepcion Trujillo de Sandoval.....	35½

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12.	Anastacio Garcia and Concepcion Trujillo de Sandoval.....	45
13-14.	Felipe Candelaria, heirs (Melquiades Martinez y Griego).....	50
15.	Juan Montoya.....	40
16.	Candido Gonzales.....	43
17.	Conrado A. Gonzales.....	42½



Number.	Name.	Veras.
18.	Mariano Gonzales .....	200
19.	Jose Gonzales y Montoya, heirs.....	92
20.	Jose Chavez .....	19
21.	Felix Tafuya y Gonzales.....	19
22.	Ambrosio Garcia .....	40
23.	Luz Silva de Gonzales.....	40
24.	Dionicio Camacho .....	58
25.	Melquiades Martinez y Griego.....	48
26.	Andres Gallegos .....	57
27.	Alejandro Sandoval .....	112
28.	Victor Tafuya .....	7
29.	Florencio Gonzales, heirs.....	28
30.	Marcelina M. de Gonzales.....	56
31.	Toribio Armijo .....	28
32.	Rosa Salas de Gonzales.....	28
33.	Mariano Gonzales .....	28
34.	Antonio Jose Gonzales, heirs.....	80
35.	Avelina Garcia de Gonzales, heirs (R. E. Heller, Beatrice Gonzales de Heller, and Omiliano San- doval) .....	100
36.	Anicito Armijo, heirs (Trodila Gonzales de Armijo)	56
37.	Candido G. Gonzales .....	222
38.	Jesus Garcia .....	50
39.	Juan Dominguez .....	84
40.	Antonio Ignacio Martinez .....	25
41.	Lenor Tenorio de Gonzales.....	75
224		
42.	Manuel Antonio Perea, heirs (Francisco Lucero y Montoya one) .....	80
43.	R. F. Heller (Beatrice Gonzales de Heller).....	43
44.	Guadalupe Armijo, heirs (Guillermo Martinez, one)	22
45.	Mariano S. Otero, heirs.....	40
46.	Avenicio Perea (successor to Vicenta Montoya)....	34
47.	Rafaela Gutierrez de Gonzales.....	70
48.	Guadalupe Gutierrez de Martinez.....	33
49.	Leopoldo Martinez .....	44
50.	Carlos Martinez .....	22
51.	Guadalupe Gutierrez de Martinez, heirs.....	40
52.	Dolores Griego heirs .....	60
53.	Alejandro Gonzales .....	33
54.	Francisco Gonzales .....	38
55.	Julio Martinez .....	37
56.	Bonifacio Carrillo and Donasio Rivera.....	29
57.	Candido G. Gonzales .....	13
58.	Adeliada Garcia .....	148
59.	Bernabe C. de Baca.....	15
60.	Donaciano Perea .....	15
61.	Luis Garcia .....	30

Number.	Name.	Vara.
62.	Pomposa Griego .....	10
63.	Manuel Gonzales (and J. M. Sandoval) .....	37
64.	Abran Perea .....	60
65.	Jesus Perea .....	60
66.	Jesus Maria Sandoval .....	33
67.	Jose Leandro Garcia .....	33
225		
68.	Manuel Antonio Perea heirs (Nasario Perea, one) ..	50
69.	Epimino A. Miera .....	90
70.	Delfino Gutierrez .....	25
71.	Jose Leon Gutierrez .....	30
72.	Federico Gutierrez .....	7
73.	Jose Felipe Silva .....	46
74.	Dolores Gutierrez de Tafoya heirs (Adron Jones and Luis Tafoya) .....	18
75.	Erinea Cordova de Griego .....	60
76.	Ignacio Gutierrez .....	74
77.	Erinea Cordova de Griego .....	52
78.	Jose Leon Gutierrez .....	17
79.	Octaviano Lopez .....	34
80.	Jose Felipe Silva .....	30
81.	Pomposa Griego .....	30
82.	Pedro Perea heirs (Manuel Perea y Miera, one) ....	40
83.	Leon Darras .....	95
84.	Jesus Maria Sandoval .....	70
85.	Jose Felipe Silva .....	60
86.	Nestor Gonzales .....	20
87.	Nieves Montoya de Sandoval heirs (Jose Griego one of the heirs) .....	44
88.	Tomas Montoya heirs (Alvina Montoya de Sanches one) .....	126
89.	Juan Cristoval Lopez .....	75
90.	Evaristo Griego .....	32
91.	Alvina Montoya de Sanches .....	33
92.	Jesus Maria Gutierrez .....	32½
92½.	Jose Griego .....	32½
93.	Secundino Sandoval .....	43
94.	Gertrudes Carillo heirs (Julio Montoya, one of the heirs) .....	44
226		
95.	Alejandro Sandoval .....	40
96.	Rafael Maestas .....	60
97.	Angelo Salce, and Luis Salce .....	100
98.	Barbara Aragon heirs (Sisters of Loretto, Bernalillo, N. M.) .....	215
99.	Jose Manuel Sanches .....	20
100.	Petronilio Martinez .....	12
101.	Vicente Garcia .....	22

Number.	Name.	Value.
02.	Nicanor Martinez .....	18
03.	Eugenia Vernier .....	36
04.	Meliton Garcia .....	36
05.	Augustin Leal heirs (Valentin Leal, one of the heirs)	60
06.	Alejandro Sandoval .....	100
07.	Jesus Maria Sandoval .....	100
08.	Jose Leon Gutierrez .....	50
09.	Teofilo Perea, Filomena Armijo de Perea .....	50
10.	Alejandro Sandoval .....	100
11.	Jesus Maria Sandoval .....	100
12.	Alejandro Sandoval .....	82½
13.	Augustin Alary .....	91½
14.	Emilio Alary .....	91½
15.	Jose Manuel Montoya .....	91½
16.	Domingo Aira .....	31
17.	Joe Pinna and Charles Marra .....	61
18.	Augustin Parisis .....	91½
19.	Elias Martinez .....	50
20.	Fernando Armijo .....	400
21.	Alejandro Sandoval .....	37½
22.	Juan Garcia .....	200
23.	Alejandro Sandoval .....	118
24.	Francisco Garcia heirs (Waldo Garcia, one of the heirs) .....	30
25.	Alejandro Sandoval .....	301½
26.	Mariano S. Otero .....	65
27.	Jose Ramon Tenorio .....	15
28.	Dolores Martinez de Gutierrez .....	25
29.	Jose Gutierrez de Chavez heirs (Petronilio Chavez, one of the heirs) .....	95
30.	Dolores Martinez de Gutierrez .....	25
31.	Guillermo Tenorio .....	8
32.	Jesus Tenorio .....	15
33.	Petra Tenorio .....	50
34.	Barbara Aragon heirs (Sisters of Loretta, Bernalillo)	35
35.	Candelario Santillanes .....	15
36.	Benicio Martinez .....	42
37.	Santiago Futierrez .....	20
38.	Jose Felipe Montoya .....	85
39.	Gabriela Tenorio de Chavez .....	18
40.	Leandro Garcia .....	37½
41.	Victoriano Montoya heirs .....	37½
42.	Jesus Maria Sandoval .....	30
43.	Elias Montoya .....	21
44.	Elias Tenorio .....	35
45.	Salome Montoya .....	10
46.	Julia Gallegos .....	30
47.	Nestor Sanchez .....	30

Number.	Name.	Value.
148.	Benicio Martinez .....	12½
149.	Candelario Santillanes heirs (Juan Santillanes)....	20
150.	Jesus Maria Sandoval.....	12
151.	Jose Felipe Montoya.....	20
152.	Juan Santillanes heirs (Candelaria Santillanes)....	34
153.	Jose Lucero heirs (Francisco Lucero y Montoya, one of the heirs).....	17
154.	Severiano Martinez .....	34
228		
155.	Francisco Lucero y Chavez.....	34
156.	Felicita Montoya .....	80
157.	Felix Montoya .....	20
158.	Juan Maria Montoya.....	10
159.	Francisco Lucero y Chavez.....	20
160.	Jesus Maria Sandoval.....	800
161.	Diego Antonio Montoya, successor to Candido G. Gonzales .....	1,610
162.	Diego Antonio Montoya, successor to Candido G. Gonzales .....	100

It is therefore ordered, adjudged and decreed that the said interveners above mentioned are entitled to hold the tracts of land set off to them in the foregoing decree in severalty, free from all claim or claims of the plaintiff in this action and her co-tenants or their successors or assigns. And the said plaintiff, her co-tenants and their successors or assigns are enjoined and forever barred from claiming any right, title or interest in or to any of the said lands above described, whether under the decree of partition heretofore entered in this cause or otherwise.

It is further ordered, adjudged and decreed that the said interveners recover from the said plaintiff their costs herein, to be taxed.

To all of which said findings, decree and judgment of the court, and to each and every portion of said decree, the said plaintiff and her co-tenants and the defendants represented by A. B. McMillen except.

And the said plaintiff and her co-tenants and defendants represented by A. B. McMillen pray an appeal to the Supreme Court of the Territory of New Mexico, which said appeal is hereby granted.

Done this 4th day of January, 1910.

(Signed)

IRA A. ABBOTT,

*Associate Justice, etc.*

Endorsed: "Filed in my office this Jan. 4, 1910. John Venable, Clerk."

Be it further remembered that the following are translated copies of the original Spanish documents referred to in finding LXXIII,



of the Findings of Fact herein as Exhibits 65, 65A and 65B, together with all the endorsements appearing thereon.

### EXHIBIT 65.

TERRITORY OF NEW MEXICO,  
County of Bernalillo:

This deed, made this 19th day of January, in the year of our Lord 1886, between Jesus Perea, party of the first part, and Francisco Lucero, party of the second part,

Witnesseth: That the said party of the first part, for and in consideration of the sum of \$32 (thirty-two dollars) legal money of the United States of America, to me in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has sold, granted, delivered and conveyed and by these presents sells, grants, delivers and conveys to the said party of the second part, his heirs, administrators, executors and assigns forever, a suerte or tract of land situated in San Mateo, in the County of Bernalillo, in the Territory of New Mexico, known and described as follows:

230 Bounded on the north by lands of Pedro Candelaria; on the south by lands of Encarnacion Candelaria; on the east the Rio Grande, and on the west by the hills and prairie;

Together with all the title and appurtenances that to the same may belong and free from all encumbrances, caused by me or by any one claiming under my name, at all times. Thus the grantor signed the foregoing deed in favor of the party of the second part the day and year above mentioned.

In testimony whereof witness my hand and seal this 19th day of Jan., year of 1886, year of our Lord 1886.

(Grantor) JESUS PEREA.  
SEFERINA MEDINA.

Witnesses:

MANUEL A. PEREA.  
TEOFILO PEREA.

I, one of the Justices of the Peace of the County of Bernalillo, do hereby certify that there appeared before me Jesus Perea and Seferina Medina and Francisco Lucero, to me well known to be the identical persons mentioned in the foregoing deed, and being by me examined, they declare that the same is correct, and that they were not influenced by any person.

In witness whereof, I have affixed my signature and seal this 21st day of January, 1886.

(Signed)

ANICETO ARMIJO, [SEAL.]  
Justice of the Peace.



*Warranty Deed.*

This indenture made and agreed to this 19th day of May, A. D. 1891, between Jose Montano y Candelaria and Angela Lerma de Montano, of the County of Bernalillo, in the Territory of New Mexico, party of the first part, and Francisco Lucero of the County of Bernalillo, in the Territory of New Mexico, party of the second part,

Witnesseth: That the said party of the first part, for and in consideration of the sum of twenty-five dollars legal money of the United States of America to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, the parties of the first part have granted, bargained, sold, conveyed and confirmed and by these presents do grant, bargain, sell, convey and confirm to the said party of the second part, his heirs and assigns forever, in fee simple, all their right and interest in a parcel of land situated in San Mateo, in the County of Bernalillo, in the Territory of New Mexico, in the precinct of El Rancho No. 4, bounded as follows:

On the north by lands of Culasa Luna, deceased; on the south by lands of Rita Luna; on the east by the Rio Grande, and on the west by the Ceja of the Rio Puerco, measuring sixteen yards in width.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, and also all estate, right, title and interest, whatsoever, in law or in equity, of said parties of the first part in and to the same, and to any part or portion of  
232 the same with the appurtenances;

To have and to hold the premises above granted, bargained, sold and described, with the appurtenances, to said Francisco Lucero and his heirs and assigns forever, the said parties of the first part, for themselves, their heirs, executors and administrators do covenant and agree with the said party of the second part, their heirs and assigns, that the said parties of the first part, their heirs and every and each person or persons whomsoever, legally or equitably deriving any estate, right, title or interest of, in and to said premises heretofore conveyed for under trusteeship they or any of them will do at any time or times in the future upon the reasonable request and at his own expense of the said party of the second part, his heirs and assigns, they will do and execute any and all other reasonable acts and legal transfers and securities under the law for the better and more effective empowering and confirming the premises by these presents conveyed or intended to be conveyed in and to the said party of the second part, his heirs and assigns forever, or to his attorney learned in the law, whenever reasonably informed or required, and the said parties of the first part for themselves, their heirs, executors and administrators by these presents do covenant and agree in and with the said party of the second

part, his heirs and assigns, that they, the said parties of the first part, and their heirs, the above granted mentioned and described premises, with the appurtenances to the party of the second part, his heirs and assigns, against the said party of the first part and their heirs and against all and any other persons whatsoever legally  
 233 claiming or to claim the same by these presents will warrant and forever defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

(Signed) JOSE MONTANO Y CANDELARIA.

(Signed) ANGELA LERMA DE M.

NICANO MARTINEZ.

JUAN ANTILLON.

TERRITORY OF NEW MEXICO,  
*County of Bernalillo:*

Personally appeared before me, the undersigned, a Justice of the Peace, Jose Montano and Angelita Lerma, to me personally known to be the identical persons whose names are subscribed to the foregoing deed, as parties to the same, and each one of them declared that they signed and executed the same of their own free will and for the uses and purposes therein mentioned. The said Angelita Lerma having been examined by me separately and apart from her said husband and having explained to her the contents of said conveyance, acknowledged to have signed and executed the same of her own free will, freely and voluntarily and without any compulsion from her said husband.

In witness whereof I have set my hand and official seal this 19th day of May, 1891:

(Signed) RUMALDO MONTOYA Y APADACA,  
*Justice of the Peace.*

234 EXHIBIT 65-B.

TERRITORY OF NEW MEXICO,  
*County of Bernalillo:*

This deed, made this 18th day of December, of the year of our Lord 1885, between Jesus Garcia and his wife, Placida Candelaria de Garcia, parties of the first part, and Jesus Perea, party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of \$12 to them in hand paid by the said party of the second part, in legal money of the United States of America, the receipt of which is hereby acknowledged, have sold, delivered, conveyed and transferred, and by these presents do sell, deliver, convey and transfer to the said party of the second part, all right, title and reversion and reversions to a certain portion of land situated in San Mateo, in the County of Bernalillo, consisting of sixteen varas in width, known and described as follows: Bounded on the north by lands of Pedro

Candelaria; on the south by lands of Encarnacion Candelaria, and on the east by the Rio Grande, and on the west by the hills and prairie. This conveyance is made by the said parties of the first part with all the privileges and appurtenances to the same belonging, and free from all encumbrances made or suffered by the said party of the first part or by any of their legal representatives or any claim made under our own name forever to them, their heirs, administrators and legal representatives and at all times. Wherefore, they signed and executed the foregoing deed, they, the said parties of the first part, in favor of the said parties of the second part.

235 In testimony whereof, the said parties of the first part affix to this their hands and seals this — day of December, 1885.

(Grantor) PLACIDA CANDELARIA.  
(Grantor) JESUS GARCIA.

Witnesses:

FRANCISCO ROMERO,  
JUAN MA. GUTIERREZ.

TERRITORY OF NEW MEXICO,  
*County of Bernalillo:*

I, the undersigned Justice of the Peace of Precinct No. 2 of said county, do hereby certify that there appeared personally before me, Jesus Garcia and Placida Candelaria de Garcia, to me personally known to be the same persons who executed the foregoing deed, and the said Placida Candelaria de Garcia in a separate examination from her said husband declared that she signed the same without compulsion from any person and for the purposes therein expressed, this 19th day of December, A. D. 1885.

(Signed) ANICETO ARMIJO. [SEAL.]

Be it further remembered that the following are translated copies of the original Spanish documents referred to in sub-finding No. 5 of finding III of the findings of fact referred to as Exhibits 28 and 28-A and a correct copy of Exhibit 28-B, together with all endorsements appearing upon the respective exhibits.

#### EXHIBIT 28.

At this place of San Isidro de Los Corrales, on the 15th day of June, seventeen hundred and ninety, before me, Don Nerio Antonio Montoya, Alcalde Mayor and War Captain of the said ju-  
236 risdiction of San Carlos de la Alameda, and the districts thereof, there appeared personally Don Miguel Lobato and his brother, Augustin, both residents of the villa of Santa Fe, and the Lieutenant Don Diego Antonio Montoya, a resident of San Isidro de los Corrales, whom I certify I know, and the said Miguel Lobato and his brother, Augustin Lobato, acknowledge that they grant and sell and in fact did sell in royal sale to the said Don

Diego Antonio Montoya, to-wit, one thousand six hundred and ten varas of land which is situated at the place commonly known as Santiago, and its boundaries are, on the north by lands of Jose de Armijo, on the south by lands of Antonio Jose Trujillo, on the east by the Rio del Norte, on the west by the Ceja of the Rio Puerco. And the said land was sold by the said vendors above mentioned to the said purchaser for the price and quantity of two hundred (illegible —), which said price and quantity is by said parties acknowledged to have been received to their entire satisfaction and pleasure, and with which quantity they declare themselves as paid, pleased and satisfied, and if the said lands are or may be worth more, they make him grant and gift of the same, pure, mere, perfect, which the law denominate irrevocable, interivos, whereby the said vendors renounce their own right, and domicile, the laws of the Non Numerata Pecunia, proof and payment and those of the community which treat of half of the just price, and they deliver the same free from all taxes and mortgages, so that he may sell the same as his own to whatever person he pleases, and that he may enjoy the same for himself, his children, his heirs and successors, and that there shall be no suit or demand instituted against them, but should there be any instituted that it shall not be heard in court or out of it, and they gave all the power by law required to the royal courts of his majesty, besides what they have in their own right to compel them to the fulfillment of this obligation with all the rigor of the law as if it were by final sentence given by a competent judge consented to and not appealed, and the said parties bind themselves to the fulfillment of this instrument and the aforesaid parties bind themselves and their property to have and to hold to the defense of this instrument and as royal vendors they renounce all the laws that may be pleaded in their favor. It was so done by the said vendors before me, the said Alcalde Mayor and the assisting witnesses, and they did not sign the same because they said that they did not know how. I did so at their request with the assisting witnesses with whom I acted, as special judge, there being no secretary in this kingdom. To which I certify on said day, month and year.

(Signed) NERIO ANTONIO MONTOYA. [RUBRIC.]

Witnesses:

THOMAS MANL. MONTOYA, [RUBRIC.]

*For and at the Request of Antonio Martin.*

TOMAS MANL. MONTOYA. [RUBRIC.]

#### EXHIBIT 28-A.

In the name of the Almighty God, and of the always Virgin Mary, conceived without the stain of original sin. Amen.

Know all who may see this, my testamentary disposition, that I, Maria Manuela Martinez, being sick in bed, with the sickness which God our Lord has seen fit to send me, being of full and sound mind and natural understanding, I dispose and order this, my last will and testament in the following form:

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Firstly. I state and confess that I am a Christian Catholic by the grace of God, believing and confessing the mystery of the most blessed Trinity, Father, Son and Holy Ghost, three distinct persons, and only one true God, and all of the other mysteries, confessed and believed by our Mother the Holy Catholic and Apostolic Roman Church, in which faith and belief I have lived and declare to die as a Christian Catholic.

Item. I commend my soul to God, our Lord, who created it and redeemed it with the infinite price of His precious blood, and my body to the earth from which it was made.

Item. It is my will that if God, our Lord, should be pleased to take me from this life to the other, that my body be buried in the Church of our Lady of Dolores of Sandia in the place to be chosen by my executors, and that my body be shrouded in the garb of our Father San Francisco; that my burial be of the customary kind with mass with the body present and a novenary of masses.

Item. I order that the novenary be complied with.

Item. I declare that I was married with the nuptial benediction, according to the rites of our Holy Mother Church, with Don Diego Ano. Montoya, now deceased, from which marriage we had and procreated eight children: six boys and two girls, of which three are free adults.

Item. I declare that I gave Nereo when he married one gun, two pistols and cartridge-box, one axe and one hoe.

239 Item. I declare that I gave Barbara when she married, one horse, one mare and one dry cow.

Item. I declare that I gave Maria Apolonia when she married, one mare.

Item. The other children are, Anto. de Jesus, Juan, Matias, Lino and Ramon. They shall inherit fully the same as the others, as they are all my legitimate children.

Item. I declare that I leave to Maria Eulalia, one cow with calf; I order that it be delivered to her, whom I raised from birth.

Item. I declare that three cows belong to my brother Josef, and one calf one year old. The said cattle were raised from a cow which was given by my deceased husband to him.

Item. I declare that I have a ranch of cultivated land where I am now living, with one adobe house containing four rooms, said ranch consists of two hundred varas of land, with another suerte of land which I bought from Mr. Fragoza, which belongs to the place of Los Aragones. It is not known how much that land is until it shall be partitioned among the said Aragones.

Item. I declare that I have one hundred varas of unbroken land at Los Tres Alamos.

Item. I declare that I have another ranch at the place of Santiago.

Item. I declare that I have three cows, five calves one year old, two bulls two years old, seven oxen, eight grown mares, four colts one year old, one horse, two she-mules and two he-mules and one burro.

240 Item. I declare that I have one cart with its accessories, one ax, one hoe, three plows, one adze, one chisel, one large table and one small table, one bench, one stool, one almu measure and one-half fanega measure.



Item. One loom trimmed with two flats, two combs, blanket weaver and cloth weaver, one spinning-wheel with plank and spindle, a crank, one pair old combs and branding iron.

Item. One case with lock and key, one more box with lock and key, two locks more with keys, one bedstead and three bunks.

Item. Also one iron griddle, one iron spoon, one iron broiler, two metates with crushers and one old kettle, one small pan, one stew pan, one cup for drinking water, four china plates, one chocolate cup, one bottle, four forks, one mortar with pestle.

Item: Also ten frames, one statue of Christ and one crucifix.

Item. Also two calico patterns, one colored shawl, one muslin handkerchief, and one piece of cloth; four mattresses, three blankets, one woolen sheet, two carpets, two cowhides.

Item. I declare that I have six untrimmed harnesses and one barrel.

Item. I declare to have on share five hundred ewes belonging to Don Diego Montoya.

Item. I declare to owe one hundred fleece of wool and one hundred wethers on account of said sheep.

Item. I owe Don Juan Ortiz ninety-eight wethers.

Item. I owe the Rev. Fry Geronimo Riego two wethers.

Item. I declare that Juan Pablo Garcia owes me one mare. I order that the same be claimed.

241 Item. Juan Antonio Chaves owes me a bolt of unbleached muslin and one bolt of cloth.

Item. I declare that my son, Nerio, took to Chihuahua of my property eleven blankets, one buckskin and one mule. And Mateo Muniz owes me six dollars in currency of the country.

Item. Juan Miguel Montano owes me two dollars in currency.

Item. Jesus the tailor owes me six dollars in currency.

All my belongings being accounted for, from my property all my debts shall be paid, and also the funeral expenses. If there is anything else besides what is listed above belonging to me, I order that it shall be included in the bulk of my estate.

Item. I hereby appoint as executors of this, my will, in the first place my son, Nerio Antonio Montoya; second, Antonio de Jesus Montoya; and third, Rafael Lucero, my son-in-law, to carry into effect this, my will.

Item. I order, and it is my will, that after the payment of my funeral expenses, masses and other debts that I have mentioned, the property be partitioned among my heirs in equal shares, and that they may enjoy the same with the blessings of God and mine.

Item. I declare that I have never made any other testament, memorandum or codicil, and if any should appear I declare it null and void, and I wish that this one shall be carried into effect according to its contents.

In order that this, my will, may have the force and validity required by law, I requested the Alcalde Mayor of this jurisdiction, Don Cleto Miera y Pacheco, to interpose his authority and judicial sanction, and I, the said Alcalde Mayor, did say that

242 I interposed and did interpose the same according to the au-

thority conferred on me by law, acting with and before my assisting witnesses.

I hereby certify the testatrix to be of full and sound mind and natural understanding.

Executed at this place of San Isidro de Los Corrales on the fourth day of January, 1810, to which I certify.

At the request of the testatrix, Maria Manuela Martinez, I signed,  
JOSE GUTIERREZ. [RUBRIC.]

Witness:

JOSE GUTIERREZ.

### EXHIBIT 28-B.

This indenture, made this 4th day of January, 1904, between Quirino Gonzales y Montoya and Luz Silva de Gonzales, his wife, Fabiana Gonzales de Martinez, widow of Marcos Martinez, Jose Gonzales and Adela Garcia de Gonzales, his wife, Aniceto Armijo and Tiofla Gonzales de Armijo, his wife, and Trancito Gonzales, parties of the first part, and Candido G. Gonzales, party of the second part, all of Sandoval County, New Mexico.

Witnesseth: That the said parties of the first part, for and in consideration of the sum of one dollar, lawful money of the United States, to them in hand paid, by the party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, remised, released, conveyed and confirmed and by  
243 these presents do grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part and to his heirs and assigns forever all the undivided interest, right, shares, estate and title of, in and to the land grant known and designated as the San Carlos de Alameda Land Grant, and in and to that certain tract of land situate in and a part of said grant and bounded and described as follows, to-wit: Extending from the Rio Grande on the east to the Ceja or brow of the Rio Puerco on the west, and in width from north to south sixteen hundred and ten varas, said strip or suerte of land being known as the place of Santiago or more commonly designated as "La Vega de Santiago," and bounded on the north by lands formerly owned by Jose De Armijo, on the south by the southern end of the Vega de Santiago and by lands formerly owned by Antonio Jose Trujillo, said suerte of land hereby intended to be conveyed being the same land conveyed by a deed dated the 15th day of June, 1790; together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, equity, property and possession claim and demand whatsoever, as well in law as in equity, of the said parties of the first part of, in or to the above described premises and every part and parcel thereof, with the appurtenances, to have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto said party of

the second part, his heirs and assigns forever, and the said parties  
 244 of the first part and their heirs, the said premises in the quiet  
 and peaceable possession of said party of the second part,  
 his heirs and assigns against the said parties of the first part  
 and their heirs and against all and every person whomsoever law-  
 fully claiming or to claim the same shall and will warrant and by  
 these presents forever defend.

In witness whereof, the said parties of the first part have hereunto  
 set their hands and seals the day and year first herein above written.

QUIRINO GONZALES Y MON-  
 TOYA.

[SEAL.]

Her  
 LUZ SILVA (x) DE GONZALES.

[SEAL.]

mark.  
 ANICETO ARMIJO.

[SEAL.]

Witness to signature:

J. F. SILVA.

Her  
 TEOFILA G. (x) DE ARMIJO.

[SEAL.]

mark.

Witnesses to signature:

J. F. SILVA.

H. P. OWEN.

Her  
 FABIANA GONZALES (x) DE  
 MARTINEZ.

mark.

[SEAL.]

Witnesses to signature:

J. F. SILVA,

H. P. OWEN.

JOSE GONZALES. [SEAL.]  
 ADELA GARCIA DE GON-  
 ZALES. [SEAL.]  
 TRANCITO GONZALES. [SEAL.]

Witness to signature of Trancito Gonzales:

ANICETO ARMIJO,

*Her Guardian.*

TERRITORY OF NEW MEXICO,  
*County of Bernalillo, ss:*

Before me personally appeared Quirino Gonzales y Mon-  
 245 toya, Luz Silva de Gonzales, Aniceto Armijo, Teofilo G. de  
 Armijo, Fabiana Gonzales de Martinez, Jose Gonzales, Adela  
 Garcia de Gonzales and Trancito Gonzales, to me known to be the  
 persons described in and who executed the foregoing instrument, and  
 acknowledged that they executed the same as their free act and  
 deed.

(Signed)

HARRY P. OWEN,  
 [NOTARIAL SEAL.] Notary Public, Bernalillo County, N. M.

Endorsed: Territory of New Mexico, County of Sandoval—as. This instrument was filed for record on the 7th day of January, 1904, at 2 o'clock p. m. Recorded in Vol. 1 D of Records of said county, folios 14 and 15. (Signed) O. P. Hovey, Recorder. (Signed) M. C. de Baca, Deputy. (Seal of Probate Court.)

And Thereafter, on to-wit, the 10th day of January, 1910, there was entered of record and filed in the office of the Clerk of said Court, in said cause, certificate of the Judge of said Court; which said certificate is in the words and figures following, to-wit:

246 TERRITORY OF NEW MEXICO,  
County of Bernallillo:

In the District Court.

No. 7126.

VICENTA MONTOYA, Plaintiff,  
VS.

UNKNOWN HEIRS OF FRANCISCO MONTES VIGIL, et al., Defendants.

I, the undersigned judge of said court, do hereby certify that it is not practicable to print in the record the map filed in this cause, marked "Exhibit A-1," and referred to in Finding LXXIX; and also found that it is not practicable to print in the record so as to be intelligible the genealogy filed in said cause as "Exhibit E" with referee's report, and referred to in Finding LXXXIX.

It is therefore ordered that the clerk include this certificate in his transcript, and that said papers above described be sent to the clerk of the Supreme Court by Wells-Fargo Express or registered mail, to be considered in connection with the transcript of the proceedings in said cause upon appeal, as provided in Rule 5 of the Supreme Court.

(Signed)

IRA A. ABBOTT,  
Associate Justice, etc.

Endorsed: "Filed in my office this Jan. 10, 1910. John Venable, Clerk."

And Thereafter, on to-wit, the 20th day of January, A. D. 1910, there was filed in the office of the clerk of said court, in said cause, an appeal bond; which said appeal bond is in the words and figures following, to-wit:



247 In the District Court of the County of Bernalillo, Territory of New Mexico.

No. 7126.

VICENTA MONTOYA, Plaintiff,

VS.

UNKNOWN HEIRS OF FRANCISCO MONTES VIGIL et al., Defendants;  
CANDIDO G. GONZALES et al., Interveners.

*Appeal Bond.*

Whereas, the above named plaintiff and the defendants represented by A. B. McMillen, in said cause, have sued out an appeal in the above named cause to the Supreme Court of the Territory of New Mexico; and,

Whereas, the said appellants desire to secure such costs as may be adjudged against them in said Supreme Court as provided by statute in such case made and provided;

Know All Men By These Presents, that Alonzo B. McMillen, on behalf of the appellants in this cause, as principal, and H. F. Raynolds and Frank McKee as his sureties, are held and firmly bound unto Candido G. Gonzales and all the other interveners in said cause represented by A. A. Sedillo and G. S. Klock, being the appellees in this case, for the payment of all costs that may be adjudged against said appellants in said Supreme Court on appeal; for which costs we bind ourselves, our heirs, executors and administrators, firmly by these presents.

Sealed with our seals and dated this 18th day of January, A. D.

1910.

248 (Signed)  
(Signed)  
(Signed)

ALONZO B. McMILLEN.	[SEAL.]
HERBERT F. RAYNOLDS.	[SEAL.]
FRANK MCKEE.	[SEAL.]

TERRITORY OF NEW MEXICO,  
*County of Bernalillo, ss:*

On this 19th day of January, 1910, before me, a notary public within and for said county, personally appeared Alonzo B. McMillen and H. F. Raynolds and Frank McKee, to me personally known, and being by me first duly sworn, did say, each for himself and not one for the other, that he is worth the amount of said bond over and above his just debts and liabilities and property exempt from execution.

In Witness Whereof, I have set my hand and affixed my notarial seal the day and year last above written.

(Signed)  
[SEAL.]

ADELA C. HOLMQUIST,  
Notary Public.

My commission expires January 30, 1910.



Endorsed: "Filed in my office this 20th day of January, 1910. John Venable, Clerk."

And Thereafter, on to-wit, the 20th day of January, A. D. 1910, there was filed in the office of the clerk of said court, in said cause, a *præcipe* for transcript of record; which said *præcipe* is in the words and figures following, to-wit:

249 In the District Court of the County of Bernalillo, Territory of New Mexico.

No. 7128.

VICENTA MONTOYA, Plaintiff,

VS.

THE UNKNOWN HEIRS OF FRANCISCO MONTES VIGIL, Deceased,  
et al., Defendants.

*Præcipe.*

The clerk will make transcript to be used on appeal in the above cause for the following, deemed necessary for a proper review of said cause, to-wit:

Complaint; affidavit for publication; legal notice with proof of publication; additional proof of publication; order of August 9, 1906, appointing referee, etc.; answer of Bonifacio Montoya and others; judgment for partition; affidavit of commissioners; report of commissioners; order allowing intervention of November 20, 1907; answer of Alejandro Sandoval, et al.; reply to said answer; amended answer of Candido G. Gonzales; reply to said answer; answer of A. B. McMillen; stipulation filed March 11, 1909; judgment of the court filed March 11, 1909; findings of fact filed January 4, 1910; final decree upon the question of intervention, filed January 4, 1910; certificate of the court filed January 10, 1910; exhibits 28, 28-A and 28-B, referred to in sub-finding 5 of finding III, and exhibits 65, 65-A and 65-B of finding LXXIII; bond for costs on appeal, and this *præcipe*.

A. B. McMILLEN,  
*Attorney for Appellee.*

250 Endorsed: "Filed in my office this 20th day of January, 1910. John Venable, Clerk."

TERRITORY OF NEW MEXICO,  
*County of Bernalillo, ss:*

I, John Venable, Clerk of the District Court of the Second Judicial District, Territory of New Mexico, within and for the County of Bernalillo, hereby certify the above and foregoing to be true, correct and perfect copies of so much of the record and proceedings in a cause lately pending in said court, entitled, "Vicenta Montoya vs.

Unknown Heirs of Francisco Montes Vigil, Deceased, et al.," as is called for in the preceipe filed in said cause, as same remain of record and on file in my said office.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the said court this 7th day of January, A. D. 1910.

[SEAL.]

JOHN VENABLE,

*Clerk of said Court.*

251 And Afterwards, on towit, on the twenty-second day of March, A. D., 1910, there was filed in the office of the Clerk of the Supreme Court of the Territory of New Mexico, an assignment of errors by appellant in the above entitled cause, which said assignment of errors by appellant were and are in the following words and figures towit:

In the Supreme Court of the Territory of New Mexico, January Term, A. D. 1910.

No. 1325.

VICENTA MONTOYA, Plaintiff,

vs.

UNKNOWN HEIRS OF FRANCISCO MONTES VIGIL, Deceased, et al.,  
Defendants, Appellants,

vs.

CANDIDO G. GONZALES et al., Interveners and Appellees.

Appeal from District Court, Bernalillo County.

*Assignment of Errors.*

1. The court erred in allowing the intervention of Candido G. Gonzales and others on the 20th day of November, 1907, after final decree of partition adjudging the appellants to be the owners of the real estate involved by decree entered the 17th day of June 1907, the court having adjudged in said decree of partition that the said appellants: "Are the owners of said tract of land in fee simple, as tenants in common, in proportions as indicated by the fractions set opposite their respective names, and that no person or persons other than said parties hereinafter mentioned (Appellants) have any interest in or title to said land or any part thereof in possession, remainder, reversion or otherwise, except as hereinbefore excepted."

Said interveners claiming adversely to appellants and in opposition to said partition proceedings and said decree of partition being final as to ownership of appellants and the adverse claims of interveners, and said final decree of partition not having been vacated or set aside:

252 2. The court erred in concluding as a matter of law upon the findings of fact set forth in the record of this cause: "That each and every intervener is entitled in severalty and in fee

simple absolute to the portion and portions of land described in the finding of fact relating thereto; To which reference is made for further definition and identification, and that the plaintiff herein and the heirs of Captain Juan Conzales are barred thereof forever;" to which conclusion of law the appellants at the time excepted.

3. The court erred in adjudging and decreeing that Jose Felipe Silva is the owner in fee simple, absolute and in severalty, of the strips of land set forth after the name of the said Silva in the final decree of intervention.

4. The court erred in adjudging and decreeing that Candido G. Gonzales is the owner in fee simple absolute and in severalty of the lands set forth in said final decree as the property of said Conzales.

5. The court erred in adjudging and decreeing that each of the interveners mentioned in said decree are the owners in fee simple absolute and in severalty or otherwise, of the real estate following their respective names; it being the intention to assign as error each of the said portions of said final decree in which it was adjudged and decreed that the respective interveners mentioned in said decree were the owners of the tracts of land following their respective names, as fully as if this assignment stated a separate assignment of error as to each and every one of the interveners mentioned in said final decree of partition.

6. The court erred in ordering, adjudging and decreeing: "that the said interveners above mentioned" (in said decree) "are entitled to hold the tracts of land set off to them in the foregoing decree in severalty, free from all claim or claims of the plaintiff in this action and her co-tenants or their successors or assigns; and  
253 the said plaintiff, her co-tenants and their successors and assigns are enjoined and forever barred from claiming any right, title or interest in or to any of the said lands above described, whether under the decree of partition heretofore entered in this cause, or otherwise."

7. The court erred in not finding and decreeing the issues raised by said intervention in favor of the appellants, and against said interveners.

8. The court erred in rendering a final decree on intervention entirely inconsistent with and contradictory of the final decree of partition, after the same had become final and absolute as between the appellants and interveners and without said final decree of partition having been vacated or set aside.

Wherefore appellants pray that said final decree of intervention be reversed and that they be restored to all things lost by reason of said decree.

(Signed)

A. B. McMILLEN,  
*Attorney for Appellants.*

And Afterwards, on to wit, at a regular term of the Supreme Court of the Territory of New Mexico, begun and held at Santa Fe, the seat of government, on the first Wednesday of January A. D., 1910, on the Twelfth day of the said regular term, the same being Thurs-

day, the twenty-eighth day of July, the following among other proceedings were had and entered of record to wit:

254

No. 1325.

VICENTA MONTOYA, Plaintiff,

vs.

UNKNOWN HEIRS OF FRANCISCO MONTES VIGIL, Deceased, et al.,  
Defendants, Appellants,

vs.

CANDIDO G. GONZALES et al., Interveners, Appellees.

Appeal from District Court, Bernalillo County.

This cause coming on for hearing upon the transcript of record, assignment of errors and briefs of counsel, is argued by A. B. McMillen, Esq. for Appellants, and A. A. Sedillo, Esq. and George S. Klock Esq., for appellees, and submitted to the court, and the court not being sufficiently advised in the premises takes the same under advisement.

And Afterwards, on to wit, at a regular term of the Supreme Court of the Territory of New Mexico, begun and held at Santa Fe, the seat of government, on the first Wednesday after the first Monday in January, A. D., 1911, on the thirty-fourth day thereof, the same being Friday, September 1st, A. D., 1911, the following among other proceedings were had and entered of record, to wit:

No. 1325.

VICENTA MONTOYA, Plaintiff,

vs.

UNKNOWN HEIRS OF FRANCISCO MONTES VIGIL, et al., Defendants,  
Appellants,

vs.

CANDIDO G. GONZALES et al., Interveners, Appellees.

Appeal from District Court, Bernalillo County.

This cause having been argued by counsel and submitted to and taken under advisement by the court upon a former day of the present term, and the court being now sufficiently advised in the premises, announces its decision by Associate Justice John R. McFie, Chief Justice Pope and Associate Justices Parker, Wright, Mechem and Roberts, concurring, affirming the judgment of the court  
255 below, except as to the two tracts of land embraced by Exhibits 28, 28a and 28b, and Exhibits No. 65, 65a and 65b, and reversing the same as to said tracts and remanding it for further proceedings as to the said tracts, for reasons stated in the opinion of the court on file: It is therefore considered and adjudged by the court that the judgment of the District Court in and for the



County of Bernalillo, whence this cause came into this court, except the portions embraced in Exhibits Nos. 28, 28a, and 28b, 65, 65a, and 65b, be and the same hereby is affirmed, \* \* \*

It is further considered adjudged and decreed by the court that the judgment of the District Court in so far as it affects the rights of Candido G. Gonzales, as represented by Exhibits 28 28a and 28b, and the right of Francisco Lucero y Montoya, as represented by exhibits 65, 65a, and 65b, be and the same hereby is reversed and this cause hereby is remanded to said District Court for further proceedings as to said mentioned tracts.

It is further considered, ordered and adjudged by the court that the said interveners do have and recover of and from the plaintiffs their costs in this behalf expended to be taxed for which let execution issue.

And Afterwards, on towit, on the eleventh day of September, A. D., 1911, there was filed in the office of the Clerk of the Supreme Court of the Territory of New Mexico, a motion for a rehearing in the above entitled cause, which said motion for a rehearing was and is in the following words and figures towit:

256 In the Supreme Court of the Territory of New Mexico.

No. 1325.

VICENTE MONTOYA, Plaintiff,

VS.

UNKNOWN HEIRS OF FRANCISCO MONTES VIGIL, Deceased; The Unknown Heirs of Juan Gonzales, Deceased, and All Unknown Owners of the Real Estate Hereinafter Described, Appellants; Candido G. Gonzales et als., Interveners and Appellees.

*Motion for Rehearing.*

The appellants in this case desire to call to the attention of this court to some of the dangers arising from the decision heretofore rendered, and to the fact that it is in violation of the provisions of the Constitution of the United States not heretofore called to the attention of the court and also that the question involved was of adverse possession and not the construction by statute which has been given by the court.

A most unfortunate state of affairs has been created relative to the titles of real estate in this commonwealth; in that by this decision the court has applied one rule for property outside of land grants and another different rule for property within land grants.

It is hardly necessary to call to the attention of the court that more than five million acres of the most valuable land within the limits of New Mexico consists of Land Grants granted by the Kingdom of Spain and later by the Republic of Mexico, and confirmed by the Congress of the United States or by the Court of Private Land Claims.



It is most unfortunate for this commonwealth that an entirely different rule for determining legal titles should be applied to this class of valuable property, and I wish to call to the attention of the court that even as to those who have gained title under this decision, their title is uncertain, and the land cannot have any great value as long as this contention remains, for the reason that the latest man with the poorest title would, under this decision, have the superior title; that is to say, possession under very small tracts with a deed not recorded covering a much larger tract might gain title to lands occupied and improved by another who is enjoying all the rights of ownership under a perfect title.

There can be no question about the attitude of the court in this decision. On page 29, the opinion states,

"The Legislature, therefore, enacted the statute, in question (Sec. 2937) and intended to create, and did create, a right and title as to real property acquired in a land grant and provided another and different rule of limitation as to real property which might be adversely acquired under Section 2938."

If this is true, the Section in question is in violation of a provision of the 14th Amendment to the Constitution of the United States, which provides that no State shall deny to any person within its jurisdiction the equal protection of the law.

The opinion proceeds as follows:

"It should be understood that, so far as this case is concerned, the construction placed upon Section 2937, supra, is made applicable to Spanish or Mexican Land grants only, as the grant lands herein described are within such a grant. The grants of lands by the United States, which might be of a very different nature, are not deemed pertinent to the decision of this case."

On page 36 the opinion states,

"It is further contended,

"That in order to acquire title by adverse possession all of the requirements above mentioned are absolutely essential, and the courts of this Territory have steadily adhered to that rule.

That in order to constitute adverse possession it must be actual, open, visible, notorious, continuous, exclusive, hostile, and under claim of right."

"This is a correct statement of the law as to the acquirement of title by adverse possession under ordinary limitation statutes such as are commonly enacted, where title enures simply by reason of a limitation and not by virtue of a fee simple title provided as an affirmative right, as in Section 2937."

From the opinion on Page 33, it appears that it is not even necessary under Section 2937 of the Compiled Laws that the plaintiff should have recorded his deed, and therefore, one might have the legal title, be in the actual possession of a large tract of land, cultivating and using it, and enjoying all the rights which his title gives him; and yet his neighbor, in possession of a small tract adjoining him might take a deed including both tracts, and without having it recorded, and without any notice whatever to the owner of the larger tract, acquire title to the whole under the terms of this

decision, which would clearly violate the provision of the 5th Amendment to the Constitution of the United States as well as to the 14th Amendment, forbidding the taking of property without due process of law. Because, in such case, a Statute beforehand determines by an arbitrary manner the rights of property and instead of being a limitation it is a statutory transfer from the true owner to a mere claimant under color of title.

On page 43 the opinion states

"If the intervenors relied upon adverse possession under Sec. 2938, there can be little doubt but that the circumstances under which these mesa lands were held would constitute constructive possession such as would, by legal presumption, adhere to the true title. If however, the conclusions of the Court in the construction of Sec. 2937 are correct, as we regard them, this is not a proceeding in adverse possession under Sec. 2938, so far as the intervenors rights are involved, but is a proceeding under Sec. 2937 in which intervenors rely upon a fee simple title by deeds under the terms of the statute."

It is clear therefore that the decision in favor of the intervenors in this case is based squarely upon the proposition that adverse possession such as is usually required under statutes of limitation affecting real estate, is not required but that title may be acquired by one claiming under a deed or devise purporting to convey an estate in fee simple, although such deed is not recorded, and although it covers title to a larger tract in which the owners are in actual possession of a portion and constructed possession under a perfect title as to the rest.

In the opinion of the court as well as in the decree of the District Court it appears that the Grant in question was made by the King of Spain to Francisco Montes Vigil and by him sold to Captain Juan Gonzales, and that said Grant was confirmed by the court of Private Land Claims to he heirs, assigns and legal representatives of the said Francisco Montes Vigil and Captain Juan Gonzales. This grant which was confirmed by the Court of Private Land Claims was a contract, and entitled to the protection of the Constitution of the United States which forbids the impairing of the obligations of a contract. To allow a title that was given to Francisco Montes Vigil and by him conveyed to Captain Juan Gonzales to be defeated by deeds which had no lawful beginning and a possession which was constructive but not actual as to the mesa lands, as against the real title as declared by the Court of Private Land Claims and by the Decree of the Court below and the possession which was constructive as to that perfect title, would be to impair the obligations of the contract, as evidenced by the Grant from the King of Spain.

The authorities, we think, are clear that the only justification for a statute of limitation affecting the title to real estate is that it is intended as a statute of repose, and to be given favor of  
280 one in actual possession of property, exercising all the rights usually required to constitute adverse possession, and cannot lawfully be given, even though that was the intention of the legis-

lature, against one who is in possession, either actual or constructive under a legal title and enjoying all the rights of his legal ownership, and if Section 2937 means what the opinion of this court says it means, it is clearly violative of fundamental rights, in that it takes the property of the true owner and gives it to the colorable owner who has no superior possession and has an inferior title.

We submit that no consideration of public policy or right or justice can sustain such a construction, and that it is clearly in violation of the provision of the Constitution of the United States.

We call attention to the fact that the intervenors at the time they filed their answer recognized the necessity of showing that they had adverse possession to the strips of land in question and set out in their answer that it was open notorious, adverse, continuous, etc., but upon being unable to prove that set of facts sought a different construction of the statute. We also call attention of the court to the fact that although Section 2937 has been in existence for more than 50 years prior to this intervention, and although numerous cases effecting title and possession, usually within land grants had gone to this court and to the Supreme Court of the United States that never prior to this time had any such contention been made for the construction of Section 2937, but the bench and bar had universally regarded the statutes involved in this case as requiring the usual elements of adverse possession.

Owing to the fact that there is such a large portion of this Territory consisting of land Grants, which this decision effects  
261 intimately, and as we think, disastrously, and inasmuch as it fixes one rule for the protection of titles outside of land grants and an entirely different rule within land grants, in fact that it gives protection to titles outside of land grants by requiring the usual elements of adverse possession, and as to titles within land Grants practically forfeits them without any redress to the legal owner, but takes them upon a statutory construction which would deny due process of law and the equal protection of the laws; that the court should re-hear this case, or at least, give these questions the careful consideration which their importance demand, and decide upon this motion, either that the statute in question, Sec. 29937 of the Compiled Laws of New Mexico, as construed by the court either does or does not violate the fundamental rights of owners of lands within land grants including the appellants in this case, and takes their property without due process of law, and denies to them the equal protection of the law.

The appellants therefore, move the court for a re-hearing upon the following grounds, not presented to the court upon the original hearing through oversight, and not considered by the court, to-wit:

1. Because Section 2937 as construed by the court in this case takes the property of the appellants without due process of law.
2. Because said Section 2937 as construed by the court in this case denies to appellants, who are owners of land within land grants, the equal protection of the law.
3. Because said Section 2937 as construed by the court in this case would impair the obligation of the contract by which the origi-

nal grantees secured said land and through which the appellants have established title by the court of Private Land Claims and the Decree of the District Court.

4. Because Section 2937 as construed in this cause is violative of fundamental rights.

(Signed)

ALONZO B. McMILLEN,  
*Attorney for Appellants.*

And Afterwards, on towit, on the thirty-seventh day of the said regular term, the same being Tuesday November, twenty-eighth, the following among other proceedings were had and entered of record towit:

No. 1325.

VICENTA MONTOYA, Plaintiff,

VS.

UNKNOWN HEIRS OF FRANCISCO MONTES VIGIL, Deceased, et al.,  
Defendants, Appellants,

VS.

CANDIDO G. GONZALES, et al., Interveners, Appellees.

Appeal from District Court, Bernalillo County.

This cause coming on for hearing upon the motion of appellants for a rehearing and the court being now sufficiently advised in the premises, grants a rehearing herein upon the question of the constitutionality of the act as set forth in the said motion for rehearing. It is therefore considered and adjudged by the court that the motion for a rehearing herein, in the above entitled cause upon the question of constitutionality of the statute hereby is granted, and the same is set for hearing for Friday, December, 1st, A. D., 1911.

And Afterwards, on towit, on the thirty-seventh day of the said Regular term, the same Being Friday, December 1st A. D., 1911, the following among other proceedings were had and entered of record, towit:

263

No. 1325.

VICENTA MONTOYA, Plaintiff,

VS.

UNKNOWN HEIRS OF FRANCISCO MONTES VIGIL, Deceased, et al.,  
Defendants, Appellants,

VS.

CANDIDO G. GONZALES, et al., Interveners, Appellees.

Appeal from District Court, Bernalillo County.

This cause coming on for hearing upon the question of the constitutionality of the act involved, herein by order of the court, and upon the transcript of record, assignment of errors and Brief of



counsel, is argued by Alonzo B. McMillen, Esq. for appellants and George S. Klock and Antonio A. Sedillo, Esq. for Appellees, and submitted to the court and the court not being sufficiently advised in the premises takes the same under advisement.

And Afterwards, *on to wit*, on the *on the* Forty-third day of the said regular term, the same being Friday, December, 8th, A. D., 1911, the following among other proceedings were had and entered of record, *to wit*:

No. 1325.

VICENTA MONTOYA, Plaintiff,

vs.

UNKNOWN HEIRS OF FRANCISCO MONTES VIGIL, Deceased, et al.,  
Defendants, Appellants,

vs.

CANDIDO G. GONZALES, et al., Interveners, Appellees.

Appeal from District Court, Bernalillo County.

This cause again coming on before the court upon rehearing, and the court having had the same under advisement upon the constitutionality of the act involved and the court being now sufficiently advised in the premises, adheres to its former decision heretofore handed down: It is therefore considered and adjudged by the court that the decision of the Court heretofore handed down in this case and upon which judgment was duly entered hereby is adhered to.

264 And afterwards, *on to wit*, on the 19th day of December, A. D., 1911, there was filed in the office of the Clerk of the Supreme Court of the Territory of New Mexico, a motion to set aside and to retax costs, which said motion to set aside and to retax costs, was and is in the following words and figures to wit:

In the Supreme Court of the Territory of New Mexico, January Term, A. D. 1911.

No. 1325.

VICENTA MONTOYA, Plaintiff,

vs.

THE UNKNOWN HEIRS OF FRANCISCO MONTES VIGIL, Deceased, et al., defendants, Appellants,

vs.

CANDIDO G. GONZALES et al., Interveners, Appellees,

Appeal from District Court, Bernalillo County.

Comes now the plaintiff and moves the court to set aside the judgment heretofore entered herein and enter final judgment with costs for appellants, for the following reasons:

1. Because said appeal was upon findings of fact by the court and the question involved was the judgment which the facts warranted and said cause should not be remanded for further proceedings:

2. Because said judgment should be in form affirming the judgment in the court below, except in so far as it should be directed to modify its judgment in accordance with the opinion of this court reversing said cause.

3. Because the Clerk of said court inadvertently provided in said judgment that the interveners should recover costs from plaintiff when as a matter of fact because of the reversal of said judgment, judgment for costs should have been in favor of appellants and against said appellees.

(Signed)

ALONZO B. McMILLEN,  
*Attorney for Appellants.*

And Afterwards, *on towit*, on the Forty-fifth day of the 265 said regular term, the same being Tuesday, December, nineteenth A. D., 1911, the following among other proceedings were had and entered of record *towit*:—

No. 1325.

VICENTA MONTOYA, Plaintiff,

VS.

THE UNKNOWN HEIRS OF FRANCISCO MONTES VIGIL, Deceased, et al., Defendants, Appellants,

VS.

CANDIDO G. GONZALES et al., Interveners, Appellees.

Appeal from District Court, Bernalillo County.

This cause coming on before the court upon the motion of appellants herein to retax costs and set aside the former judgment of this court, is argued by A. B. McMillen, Esq. for Appellants, and George S. Klock and Antonio A. Sedillo, Esq. for Appellees and submitted to the court and the court not being sufficiently advised in the premises takes the same under advisement.

And Afterwards, *on towit*, on the Forty-sixth day of the said Regular term, the same being Thursday, December 21st, A. D., 1911, the following among other proceedings were had and entered of record, *towit*:—

No. 1325.

VICENTA MONTOYA, Plaintiff,

vs.

UNKNOWN HEIRS OF FRANCISCO MONTES VIGIL, Deceased, et  
al., Defendants, Appellants,

vs.

CANDIDO G. GONZALES et al., Interveners, Appellees.

Appeal from District Court, Bernalillo County.

On motion of appellants, and it appearing to the court that the judgment heretofore rendered herein on the 1st day of September, A. D. 1911, affirming in part and reversing in part the judgment of the District Court is not in proper form.

It is ordered that said judgment be and the same hereby is set aside, and the court having heard argument of counsel and being fully advised in the premises, It is ordered that the judgment of the District Court be affirmed in part and reversed in part, and said judgment modified as follows:

The court finds that as to the Intervener Francisco Lucero y Montoya, judgment should have been rendered in favor of appellants and against the said Francisco Lucero y Montoya, and that as to the intervener Candido G. Gonzales, as to last tract of land set off to him in said decree judgment should have been in favor of Appellants and against the said Gonzales.

It is therefore Ordered, Adjudged and Decreed that in respects above mentioned the decree of the District Court be and the same hereby is reversed, and that the intervening petition, in so far as it affects the claim of said Francisco Lucero y Montoya to each of the strips of land set off to him in said decree, be and the same hereby is dismissed;

And it is further ordered, adjudged and decreed that the said Francisco Lucero y Montoya has no right, title or interest in or to either of the said strips of land set off to him in the decree of the District Court.

And it is further ordered; adjudged and decreed that the intervening petition, in so far as it affects the claim of Candido G. Gonzales, being a parcel of land situated within the limits of the Alameda Land Grant bounded and described as follows: Containing 1710 varas from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by the limits of the Alameda Land Grant, and on the south by the land claimed by Jesus Maria Sandoval, and which said strip corresponds to strip No. 161 and 162 of the list of strips attached to said decree, be and the same hereby is dismissed.

And it is ordered, adjudged and decreed by the court that the said Candido G. Gonzales had no right, title or interest in or to said land as against the claims of the appellants in his cause.

It is further ordered that said decree of the District Court be and the same hereby is in all other respects affirmed, and that this cause be remanded to the district court and that said court be directed to modify its decree as herein set forth.

It is further considered, adjudged and decreed by the court, that the costs of this appeal amounting to the sum of Three Hundred and thirty-one 95/100 (\$331.95) Dollars, be and the same hereby are assessed per capita to the 458 appellants and the two unsuccessful appellees for which let execution issue.

And Afterwards, *on towit*, on the 22nd day of of December, A. D., 1911, there was filed in the office of the Clerk of the Supreme Court of the Territory of New Mexico, a prayer for an appeal to the Supreme Court of the United States, which said prayer for an appeal to the Supreme Court of the United States was and is in the following words and figures *towit*:—

In the Supreme Court of the Territory of New Mexico, January Term, A. D. 1911.

No. 1325.

VICENTA MONTOYA, Plaintiff,

vs.

THE UNKNOWN HEIRS OF FRANCISCO MONTES VIGIL, Deceased, et al., Defendants, Appellants,

vs.

CANDIDO G. GONZALES et al., Interveners, Appellees.

Appeal from District Court, Bernalillo County.

Comes now the appellants, and complaining of the final judgment rendered in said cause in so far as it affirmed the judgment of the district court, hereby appeal from said final judgment to the Supreme Court of the United States, for the reasons specified in the assignment of errors filed herewith.

Wherefore said appellants pray that this appeal may be allowed and that findings of fact be filed by the court and a transcript  
268 of the record and findings of fact, duly authenticated, be transmitted to the Supreme Court of the United States.

(Signed)

ALONZO B. McMILLEN,  
*Attorney for Appellants.*

And Afterwards, *on towit*, on the said the twenty-second day of December, A. D., 1911, there was filed in the office of the Clerk of the Supreme Court of the Territory of New Mexico, an assignment of errors on appeal to the Supreme Court of the United States, which said Assignment of errors on appeal to the Supreme Court was and is in the following words and figures *towit*:—



In the Supreme Court of the Territory of New Mexico, January Term, A. D. 1912.

No. 1325.

VICENTA MONTOYA, Plaintiff,

VS.

THE UNKNOWN HEIRS OF FRANCISCO MONTES VIGIL, Deceased, et al., Defendants, Appellants,

VS.

CANDIDO G. GONZALES et al., Interveners, Appellees.

Appeal from District Court, Bernalillo County.

*Assignment of Errors.*

Come now the appellants in the above cause and being dissatisfied with the final judgment of the court in said cause and desiring to appeal to the Supreme Court of the United States, assign errors as follows:

1. The court erred in so far as it affirmed the judgment of the District Court.

2. The court erred in holding that section 2937, Compiled Laws of New Mexico, 1897, as construed by the court did not conflict with provisions of the Constitution of the United States, as contended for in Appellants' motion for re-hearing.

3. The court erred in so far as it affirmed said decree of the District Court, because said section 2937 as construed by the court violates fundamental rights and takes the property of the appellants without due process of law, as guaranteed by the fifth amendment to the Constitution of the United States.

4. The court erred in refusing to award costs to appellants as provided by section 3148 of the Compiled Laws of New Mexico, and in awarding costs on the so-called per capita basis.

5. The District Court erred in allowing the intervention of Candido G. Gonzales and others on the 20th day of November, 1907, after final decree of partition and adjudged the appellants to be the owners of the real estate involved by decree entered the 17th day of June, 1907, the court having adjudged in said decree of partition that the said appellants

"Are the owners of said tract of land in fee simple, as tenants in common, in proportions as indicated by the fractions set opposite their respective names, and that no person or persons, other than said parties hereinafter mentioned (appellants) have any interest in or title to said land or any part thereof in possession, remainder, reversion or otherwise, except as hereinbefore excepted." Said intervenors claiming adversely to the appellants and in opposition to said partition proceedings and said decree of partition being final as to ownership of appellants and the adverse claim of Interveners, and said final decree of partition not having been vacated or set

aside, and the Supreme Court of the Territory of New Mexico erred in affirming the District Court in that respect in this cause.

6. The District Court erred in concluding as a matter of law upon the findings of fact set forth in the record of this cause:

"That each and every Intervener is entitled to severalty and in fee simple absolute to the portion and portions of land described in the finding of fact relating thereto; to which reference is made for further definition and identification, and that the plaintiff herein and the heirs of Captain Juan Gonzales are barred thereof forever."

To which conclusion of law the appellants at the time excepted, and the Supreme Court of the Territory of New Mexico erred in affirming the District Court in that respect.

7. The District Court erred in adjudging and decreeing that Jose Felipe Silva is the owner in fee simple, absolute and in severalty of the strips of land set forth after the name of the said Silva in the final decree of intervention, and the Supreme Court of the Territory of New Mexico erred in sustaining the District Court in that respect.

8. The District Court erred in adjudging and decreeing that Candido G. Gonzales is the owner in fee simple, absolute and in severalty of the lands set forth in said final decree as the property of said Gonzales, and the Supreme Court of the Territory of New Mexico erred in affirming the District Court in that respect.

9. The District Court erred in adjudging and decreeing that each of the intervenors mentioned in said decree are the owners in fee simple, absolute and in severalty or otherwise of the real estate following their respective names, it being the intention to assign as error each of the said portions of said final decree in which it was adjudged and decreed that the respective interveners mentioned in said decree were the owners of the tracts of land following their respective names, as fully as if this assignment stated a separate assignment of error as to each and every one of the interveners mentioned in said final decree of partition, and the Supreme Court of the Territory of New Mexico erred in affirming the action of the District Court in that respect.

10. The District Court erred in ordering, adjudging and decreeing, "That the said interveners above mentioned (in said decree) are entitled to hold the tracts of land set off to them in the foregoing decree in severalty, from *from* all claim or claims of the plaintiff in this action and her co-tenants or their successors or assigns; and the said plaintiff, her co-tenants and their successors and assigns are enjoined and forever barred from claiming any right, title or interest in or to any of the said lands above described, whether under the decree of partition heretofore entered in this cause, or otherwise."

And the Supreme Court of the Territory of New Mexico erred in affirming the District Court in that respect.

11. The District Court erred in not finding and decreeing the issues raised by said intervention in favor of the appellants and against said interveners, and the Supreme Court of the Territory of New Mexico erred in affirming the District Court in that respect.

12. The District Court erred in rendering a final decree of intervention entirely inconsistent with and contradictory of the final decree of partition, after the same had become final and absolute as between the appellants and interveners and without said final decree of partition having been vacated or set aside, and the Supreme Court of the Territory of New Mexico be reversed and held for naught and that said cause be remanded with directions that the decree of the District Court be reversed and that the said appellants be restored to all things lost by reason of the judgment of the Supreme Court of the Territory of New Mexico and the said decree by the District Court of Bernalillo County.

(Signed)

ALONZO B. McMILLEN,  
Attorney for Appellants.

And Afterwards, *on towit*, at a the regular term, 1911, on the forty-seventh day thereof, the same being Friday December 22nd, A. D., 1911, the following among other proceedings were had and entered of record *towit*:—

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No. 1325.

VICENTA MONTOYA, Plaintiff,

vs.

THE UNKNOWN HEIRS OF FRANCISCO MONTES VIGIL, Deceased, et al.,  
Defendants, Appellants,

vs.

CANDIDO G. GONZALES et al., Interveners, Appellees.

Appeal from District Court, Bernalillo County.

Upon application of the appellants in the above entitled cause, and it appearing to the court that the said appellants have duly filed their assignment of errors and prayed an appeal. It is hereby ordered that the appeal of the said cause to the Supreme Court of the United States be and the same hereby is allowed, said appeal being allowed in open court at the same term that the final judgment in this cause was rendered.

And Afterwards, *on towit*: on the said the Forty-seventh day of the said regular term, the same being Friday, December 22nd, A. D., 1911, the following among other proceedings were had and entered of record *towit*:—

No. 1325.

VICENTA MONTOYA, Plaintiff;

VS.

THE UNKNOWN HEIRS OF FRANCISCO MONTES VIGIL, Deceased, et al.,  
Defendants, Appellants,

VS.

CANDIDO G. GONZALES et al., Interveners, Appellees.

Appeal from District Court, Bernalillo County.

The appellants in the above cause having prayed an appeal to the Supreme Court of the United States, and for finding of facts to be filed by this court, the court being fully advised in the premises adopts the findings of the District Court. It is therefore Ordered that the findings of fact of the District Court be and the same hereby are adopted as the findings of fact of this court.

And Afterwards, *on towit*, on the said the forty-seventh day of the said regular term, the same being Friday, December 22nd, A. D., 1911, the following among other proceedings were had and entered of record towit:—

No. 1325.

VICENTA MONTOYA, Plaintiff,

VS.

THE UNKNOWN HEIRS OF FRANCISCO MONTES VIGIL, Deceased, et al.,  
Defendants, Appellants,

VS.

CANDIDO G. GONZALES et al., Interveners, Appellees.

Appeal from District Court, Bernalillo County.

The undersigned presiding Judge of said Court, does hereby certify that it is not practicable to print in the record the map filed in this case, marked Exhibit "A1" and referred to in the finding LXXIX of the District Court, and also that it is not practicable to print in the record so as to be intelligible the geneology filed in said cause as Exhibit "E" with referee's report and referred to in finding LXXXIX.

It is therefore ordered that the clerk include this certificate in his transcript, and that said papers above described be sent to the Clerk of the Supreme Court of the United States, by Wells Fargo Express or Registered Mail, to be considered in connection with the transcript of the proceedings of said cause on appeal, as provided in subdivision 4 of Rule 8 of the Supreme Court of the United States.

And Afterwards, *on towit*, on the Seventh day of February, A. D., 1912, there was filed in the office of the Clerk of the Supreme Court of the State of New Mexico, an appeal bond in the above entitled



cause, which said appeal Bond was and is in the following words and figures following to wit:

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In the Supreme Court of New Mexico.

No. 1325.

VICENTE MONTTOYA, Plaintiff,

vs.

UNKNOWN HEIRS OF FRANCISCO MONTES VIGIL, Dec'd, et al., Defendants, Appellants,

vs.

CANDIDO G. GONZALES et al., Interveners, Appellees,

Appeal from District Court, Bernalillo County.

*Appeal Bond.*

Know all men by these presents that Amado Chaves, on behalf of the above-named appellants as principal, and A. B. McMillen, and Frank McKee as his sureties, are held and firmly bound unto the above-named interveners and appellees in the penal sum of Two Thousand Dollars (\$2,000.) for the payment of which we bind ourselves, our heirs, executors, administrators and assigns.

Sealed with our seals and dated this 7th day of February, 1912.

The condition of this obligation is such that whereas, the said appellants have taken an appeal from the decision of the Supreme Court of New Mexico in the above-entitled cause to the Supreme Court of the United States to reverse the judgment entered in said cause by said Supreme Court of New Mexico,

Now, therefore, if the said appellants shall prosecute said appeal to effect and shall pay all costs adjudged against them if they fail to make their plea good, then the above obligation to be void; otherwise to be and remain in full force and virtue.

(Signed)

AMADO CHAVES. [SEAL.]  
A. B. McMILLEN. [SEAL.]  
FRANK MCKEE. [SEAL.]

STATE OF NEW MEXICO,  
County of Bernalillo, ss:

On this 7th day of February, A. D., 1912, before me, a notary public within and for said county, personally appeared Amado Chaves and A. B. McMillen and Frank McKee, to me known to be the same persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

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And the said A. B. McMillen and Frank McKee, being by me duly sworn, did say, each for himself and not one for the other, that he is worth the penalty of the above bond over and above all debts and exemptions.

In witness whereof I have hereunto set my hand and notarial seal the day and year last-above written.

(Signed)

ADELA C. HOLMQUITS,

[SEAL.]

*Notary Public.*

My Commission expires Jan. 4, 1914.

The Foregoing bond approved as to form, penalty and sufficiency of sureties.

(Signed)

CLARENCE J. ROBERTS,

*Chief Justice.*

And afterwards, on the said the 7th day of February, A. D., 1912, there was filed in the office of the Clerk of the Supreme Court of the State of New Mexico, a precipe for record in the above entitled cause, which said precipe for record was and is in the following words and figure following towit:

In the Supreme Court of the State of New Mexico.

No. 1325.

VICENTA MONTOYA, Plaintiff,

vs.

UNKNOWN HEIRS OF FRANCISCO MONTES VIGIL, Dec'd, et al., Defendants, Appellants,

vs.

CANDIDO G. GONZALES et al., Appellees.

Appeal from District Court, Bernalillo County.

*Præcipe.*

To the Clerk of the Supreme Court:

The appellants in the above entitled cause having appealed from the judgment of the Supreme Court to the Supreme Court of the United States, you are herewith requested to make out a complete transcript of all records and proceedings in your court with the exception of the judgment of the Supreme Court entered on the first day of September, 1911, which was afterwards set aside by the court, appellants deeming the same immaterial upon appeal.

Attorneys for appellee will take notice of the above præcipe, and if they deem any part of the record omitted in the above præcipe to be material, may within ten days from service hereof suggest additions to the transcript to be made by said Clerk.

(Signed)

ALONZO B. McMILLEN,

*Attorney for Appellants.*

The undersigned appellees hereby acknowledge receipt of a copy of the above precept this 3rd day of February, 1912.

(Signed)

GEORGE S. KLOCK,  
*Attorney for Appellees.*

And heretofore, on to-wit, on the first day of September, A. D., 1911, there was filed in the office of the Clerk of the Supreme Court of the Territory of New Mexico, an opinion by the court in the above entitled cause, which said opinion by the court, was and is in the following words and figures to-wit:

277 In the Supreme Court of the Territory of New Mexico, January Term, A. D. 1911.

No. 1325.

VICENTS MONTOYA, Plaintiff,

vs.

UNKNOWN HEIRS OF FRANCISCO MONTES VIGIL, Deceased; THE UNKNOWN HEIRS of Juan Gonzales, Deceased, and All Unknown Owners of the Real Estate Hereinafter Described, Defendants, Appellants,

vs.

CANDIDO G. GONZALES et als., Intervenor, Appellees,

Appeal from District Court, Bernalillo County.

*Syllabus.*

1. Under Section 3182 Compiled Laws, 1897, the owner of the whole or any part of the premises sought to be partitioned may, whatever the origin of his title, intervene for the settlement of his rights.

2. A judgment in a partition suit which declares the rights of the parties and orders partition, is interlocutory only and is under the control of the court until final decision, and may be modified or re-cinded at any time prior to final judgment or decree.

3. Section 2937 Compiled Laws of 1897, construed and held to grant affirmative relief in the nature of a fee simple or statutory title in addition to the bar of the statute, in favor of persons being in possession of tracts of land within the boundaries of Spanish or Mexican Land Grants, for ten years under a deed or deeds of conveyance, devise, grant or other assurance purporting to convey an estate in fee simple upon compliance with the terms of the section, and possession of any part of the tract thus conveyed extends to the exterior boundaries of the lands described in such conveyance.

4. That section 2937, supra, was enacted by the legislature as a statute of repose for the purpose of settling the titles and preserving the rights of the pioneer settler who in good faith settled upon,

improved and cultivated vacant lands of the Spanish and Mexican Grants within the Territory, the ownership of which was unknown.

5. Section 2938 does not purport to confer fee simple title as is provided for in section 2937, but simply raises the bar of the statute against the bringing of actions for the possession of lands held adversely for ten years under color of title and with payment of taxes, and is inapplicable to the present case.

6. The doctrine of mixed possession as laid down in *Hunnicut v. Payton*, 102 U. S., 333, examined and held to be inapplicable.

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*Opinion of the Court.*

McFIE, J.:

It appears from the elaborate statement of the proceedings, that the plaintiff in the court below filed a complaint seeking the partition of a portion of the Alameda Land Grant, situated in both Bernalillo and Sandoval Counties. There were no individual defendants when the cause was instituted, but the defendants were denominated, "Unknown heirs and unknown owners" claiming interests in that grant. The only service had was by publication. After publication for service had been made numerous individuals represented by plaintiff's counsel Mr. A. B. McMillan, and Mr. McMillan a claimant of a large amount of the lands by purchase or otherwise, appeared as defendants, but confessing the allegations of the complaint and alleging heirship, they joined the plaintiff in the prayer for partition.

Judgment by default was taken and Harry P. Owen was appointed Referee to take the proofs and genealogy, and report to the court. Testimony was taken before Mr. Owen, conducted by Mr. McMillan, attorney for the plaintiff and the defendants for whom he appeared, and the Referee reported a genealogy and a statement of the respective undivided interests of some four hundred and fifty or more persons found by him to be heirs and owners of interests in the Alameda Grant. This report was confirmed and a judgment rendered by the court declaring those persons entitled to undivided interests as stated in the Referee's report. In the last clause of the judgment three Commissioners were appointed to make partition of the lands among the respective parties, and, if partition cannot be made without manifest prejudice to the interest of the parties, that the Commissioners shall so report.

The judgment was filed June 17th, 1907, but, while the Commissioners made a report on the 5th day of July, 1907 that the premises could not be partitioned without manifest prejudice, the report was not confirmed and a sale ordered until March 11th, 1909, nearly two years after the preliminary judgment in partition was rendered.

As will be seen by the statement of the case, the application for leave to intervene was made July 20th, 1907, and the order allowing intervention was granted November 20th, 1907.

Between the time of the entry of the judgment in partition July



5th, 1907, and the order confirming the Commissioner's report and for sale of the premises, March 11th, 1909, the issues being joined between the parties and the rights of the respective parties, both as to the partition and intervention, the same being practically consolidated,—were fully litigated and a final decree was rendered in favor of the interveners declaring them to be the owners of the lands claimed by them, and defining the amount to which each of the interveners are entitled, the terms of the final decree being set forth in the statement of the case.

The first assignment of error is upon the order of the court allowing intervention.

In the decision of this cause it should be understood that it is conceded by all of the parties to the litigation that the Alameda Grant is a perfect grant and was so declared by the Court of Private Land Claims in 1892. This litigation, therefore, does not involve a contest between the sovereign and individual heirs or claimants, but is a contest between individual claimants who assert ownership of interests in the land of the grant, as heirs, assigns, purchasers, long continued possession and use by those claiming under deeds, conveyances, devise, grant or other assurances purporting to convey an estate in fee simple, in which the sovereign has no interest.

Counsel for appellants, both in oral argument and by brief deny the right of intervention, insisting that a final decree had been rendered in their favor in the partition suit awarding them the land; that the decree was binding as against all adverse claimants and effectually barred any right of intervention to assert rights of ownership in the lands in litigation.

281 Under the partition statute of this territory intervention is specifically provided for in section 3182 Compiled Laws 1897, as follows:—

"During the pendency of any such suit or proceeding any person claiming to be interested in the premises may appear and answer the petition and assert his right by way of interpleader, and the court shall decide upon their rights as though they had been made parties in the first instance."

It will be observed that persons claiming to be interested in the premises may intervene during the pendency of a suit or proceeding having for its object the partition of lands. No limitation as to the time of intervention is prescribed, except that it must be during the pendency of the suit.

In the order of the Court allowing the claimants to intervene, it is stated that the suit was still pending at the time the order was made and, being so, it was the duty of the Court to grant the application there was no discretion to grant or refuse the right, as it was a statutory right during the pendency of the proceeding. *Baca v. Anaya* 14 N. M. 382.

It thus appearing that the intervention was in apt time, the next inquiry is whether or not the first decree in the partition proceeding was final, and deprived the interveners of any claim or interest in the lands involved, for the settlement of which a right of intervention existed.

The interveners in this case, claim the ownership of the lands sought to be partitioned in the original suit. If they are the owners of the land the partition proceedings, if unopposed, would effectually deprive them of that ownership. In fact, that, in substance, is the contention of appellants' counsel; that the preliminary decree already rendered has the effect of quieting the title to the lands claimed by both parties, in appellants. Such is the logical result of the contention, that no right of intervention exists because of the rendition of the preliminary decree.

282 That title to real estate claimed by different parties may be determined in a partition suit, and that intervention is a proper proceeding by which to accomplish this result, was settled by this court in *Baca v. Anaya*, supra, in which case the Court, after reviewing numerous decisions of other courts, said:

"We concur with all that is said by these courts, and hold that under our statute the owner of the whole or any part of the premises sought to be partitioned may, whatever the origin of his title, intervene for the settlement of his rights."

In this jurisdiction, and under our statute, it cannot be successfully maintained that the default decree or judgment, as it is called, is a final decree having any such effect as is contended for Partition proceedings in a large number of states in which statutes are similar to our own, is peculiar in that two decrees are necessary to a final vesting of title to the lands in individual ownership. In such jurisdictions the first decree declaring the interests of the parties in the lands sought to be partitioned and appointing commissioners, is designated preliminary or interlocutory.

Many of our statutes are practically the same as those of the state of Missouri, and seems to have been taken therefrom for the purpose of making our procedure similar to the settled and adjudicated procedure of that state. The decisions of that state, therefore, are of value to us in partition suits, as the procedure is similar to our own.

In *Aull v. Day*, 133 Mo. 337, after citing numerous cases to the same effect, the Court said:

"A judgment in partition suit which declares the rights of the parties and orders partition is interlocutory only and is under the control of the Court until the final decision of the suit, and may be modified or rescinded at any time before final judgment, even after the expiration of the term at which it was rendered." And the Court further said in that case that even in a case where the answer admitted the allegations of the petition, the judgment would still be interlocutory only.

283 In the State of New York the procedure under the Code is of the same nature.

In *Mingay v. Lackey*, 142 N. Y. 49, the Court said "The judgment of April 8, 1893, was interlocutory and not final. It declared the then existing rights and interests of the parties to the litigation in the land. But it divested no titles. It directed a reference for sale, for inquiry, for computation and for accounting. It provided for a distribution of the proceeds of the sale based upon the several

interests in the land which should be included in the sale. But the sale would become binding only upon confirmation by the court, and until confirmation the purchaser would not be required to pay the purchase money, and until the purchase money was paid or secured there would be no fund for distribution. The practice in partition proceedings of entering in the first instance and interlocutory judgment, to be followed by a final judgment upon the termination of the proceedings authorized by the interlocutory judgment, prevailed in chancery and is expressly authorized and required by the Code."

It seems wholly unnecessary to multiply citations in support of this view, but a reference to section 3183 Compiled Laws of 1897 authorizes a similar preliminary judgment. The next section, however, clearly indicates the necessity and grants authority for final judgment, and the record shows the rendition of a final judgment by the court.

"We have examined the authorities referred to in appellants' brief as to this point, but find that they do not sustain the contention of counsel, with one or two exceptions, but the diverging cases are from states where by statutes or code a different procedure is provided for. Take, for instance, the case of *Petrucio v. Seardon* 76 Tex. 639. This case is in line with Counsel's contention, but the state of Texas has a different procedure.

"In two states the power of the court to make partition directly and without the aid of commissioners has been affirmed, and  
284 in another that the court may direct the mode of partition. These decisions stand alone. The general rule is to the contrary." Cyc. Vol. 30, p. 250.

The three states above referred to are Texas, Tennessee and Louisiana.

The judgment relied upon by appellants was interlocutory and, as the record shows that no final judgment or decree was ever rendered in favor of the appellants, but, on the contrary, the final decree was in favor of the appellees, the interveners, hence no error was committed by the court in allowing the intervention, notwithstanding the interlocutory decree.

The remaining seven assignments of error all go to the merits of the case, each of them challenging the correctness of the final decree rendered by the court in favor of the intervening appellees and against the appellants. That a clear understanding of the scope of the present controversy as presented in the lower court and also by the record on this appeal, may be had, it must be kept in mind that the Alameda Grant includes some 89,346 acres of land; that a considerable portion of these lands are situated in the Rio Grande Valley above the City of Albuquerque, and a large part of the valley-lands are, and for a great many years have been, occupied, improved and cultivated. These occupied lands lie between the Rio Grande and the foothills on the west side of the valley. These lands are divided in strips, some of which are inclosed and some are not. As to these strips of occupied and cultivated land, the original petition contains the following allegation:

"Plaintiff further alleges that a portion of said tract of land in the Rio Grande Valley lying east of the foothills and below the irrigating ditches is occupied by various persons and claimed in severalty by reason of original allotments or by adverse possession, the amount of which said land so occupied and the names of the persons claiming to own said lands in severalty and the description of the land so occupied are to plaintiff unknown.

285 "Plaintiff further asks that partition hereinafter prayed for be made subject to the rights of said occupants in severalty." The interveners in their interpleader and answer as to these same strips of land allege:

"That they are the owners in severalty and in possession, respectively, of divers tracts of lands situate within the boundaries of the tract of land described in plaintiff's complaint, and that they and their predecessors in title have had possession of each of said tracts of land respectively, for more than fifty years last past, holding and claiming the same by virtue of deeds of conveyance, devise, grant and other assurances purporting to convey an estate in fee simple, and that no claim by suit, in law or equity, effectually prosecuted, has been set out or made to said lands within the aforesaid time or more than fifty years." The lands sought to be partitioned by all of the parties is a large body of uncultivated and unimproved grazing land extending from the ditches on the west side of the uncultivated lands to the western boundary of the grant. As to this land the petition for partition alleges:

"That all of the lands laying west of the irrigating ditches and foothills, and also a portion of the lands laying east of said irrigating ditches and foothills in the Rio Grande Valley, are held and occupied by said plaintiff and the defendants other than the unknown heirs of Francisco Montes Vigil, as tenants in common." While the interveners make the following allegations:

"Those defendants further allege that portions of the lands lying west of the irrigating ditches are not susceptible of irrigation and are only valuable and can only be used for grazing purposes; that the tracts of land owned and held in severalty as herein alleged, embrace the lands lying west of the irrigating ditches, and also the lands lying east of said irrigating ditches, portions of which are also not susceptible of irrigation and are only valuable and can only be used for grazing purposes; that portions of said lands lying

286 east and west of the irrigating ditches are susceptible of irrigation, that they are parts of the same lands and are embraced and described as such in the assurances of title aforesaid; that these defendants and their predecessors in title and the other divers persons and their predecessors in title have been in the open, actual, hostile, exclusive and continuous possession of each and all tracts of land owned and held by them in severalty as aforesaid, and that all of the tract of land known as the Alameda Land Grant and described in plaintiff's complaint, has been so owned and held for more than fifty years last past; that during all said period of time these defendants and their predecessors in title and the said divers other persons and their predecessors in title



respectively, have occupied, cultivated and improved those portions of said lands susceptible of irrigation, cultivation and improvement and have used the remainder thereof for grazing purposes, and claiming to own the whole of their individual possessions and holdings and the whole thereof, by virtue of deeds of conveyance, devise, grant and other assurances purporting to convey an estate in the fee simple to each and all of said lands respectively."

From these allegations it is apparent that both parties claim the ownership of those mesa or grazing lands, the appellants as the heirs of Captain Juan Gonzales, and the appellees by fee simple title, under "conveyances, devise, grant and other assurances purporting to convey an estate in fee simple," as provided for in section 2937 Comp. Laws 1897.

At the conclusion of the trial of the cause the same was submitted upon the pleadings, proofs and arguments of counsel for the respective parties, the court rendered a final decree with voluminous findings of fact, a separate decree in favor of all the intervenors, and a general decree in favor of all the intervenors and against the parties to the original cause and appearing by way of intervention, in terms as follows:

"It is therefore ordered, adjudged and decreed that the said intervenors above mentioned are entitled to hold the tracts of land set off to them in the foregoing decree in severalty, free from all claim or claims of the plaintiff in this action and her co-tenants or their successors or assigns. And the said plaintiff, her co-tenants and their successors or assigns are enjoined and forever barred from claiming any right, title or interest in or to any of the said lands above described, whether under the decree of partition heretofore entered in this cause or otherwise."

Exceptions were properly saved by appellants' counsel to this decree.

There being 86 findings of fact, a few of which are general substantially applying to all, while the remaining findings apply to each of the claims of the intervenors, it is impractical to set them out in full in this opinion, but it will suffice to set out in full one or two of the general findings, and one of the findings as to the separate tracts, as all of those are substantially the same.

"Finding No. 1. The interveners claim strips of land within the Alameda Grant very narrow in proportion to their length, most of them being only a few yards in width, each, and extending from the Rio Grande west to the ceja, or ridge, dividing the watershed of the Rio Grande from that of the Rio Puerco and forming the western boundary of the grant, a distance of about sixteen miles. Most of them include land between the Rio Grande and the foothills at the west of the valley, which is adapted to cultivation, and the land extending from the foothills to the ceja of the Rio Puerco, which is adapted to grazing only. Most of the intervenors live on the easterly ends of the strips of land they claim, and cultivate

such portions of the bottom lands between the river and foothills in the respective strips as they require. Near the river the land is what is termed bosque; that is land covered

with a growth of brush, trees and wild grass, and is used for pasturage. In the valley the strips of land are to some extent separated by fences and to some extent the bosque is separated in that way from the cultivated lands. From the foothills west there are no fences, nor are there any fences at the western boundaries of the strips or of the grant. By stipulation between the parties the titles to the lands between the river and the foothills are not to be determined in this action, but that does not exclude the evidentiary bearing, if any, which the use, occupation and claims of possession and ownership of these lands by intervenors respectively, so far as they appear in evidence, may have on their use, occupation and claims of possession respectively of the lands extending westerly from the foothills. The last named land bears a scanty growth of grass and other herbage and is without water, it being customary and necessary to have the animals pastured there go to the Rio Grande for water at intervals of three or four days, except for short and infrequent periods when their needs are supplied by rain or snow. By agreement, or common understanding, which has ripened into a general custom, the intervenors and their predecessors in claim of ownership have used those westerly portions of the strips they claimed, in common with each other and with others claiming ownership in the grant, no one attempting to keep his animals exclusively on the land he claimed nor requiring others claiming ownership to keep their animals off such land. To some extent those who were not claiming ownership of any land within the grant pastured their animals on the portion of it in question west of the foothills and on the strips claimed by the intervenors with the other animals pastured there, without objection by those who claimed the strips, but without their consent, except as they failed to take active measures to prevent such intrusion. This method of use was the one most convenient, economical and advantageous to the intervenors and as to all the strips, except the northern one of Gonzales, the only practicable one because of the size and shape of the respective strips which would make the expense of fencing them greatly disproportionate to their value, the character and location of the land, the scantiness of herbage and the lack of water upon it, and for no other reasons appearing in the evidence."

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#### Separate Finding No. 7.

"Jose Chaves, one of the intervenors, claims a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and containing 80 varas in width from north to south, and bounded on the north by land claimed by Concepcion Trujillo de Sandoval, and on the south by land claimed by Noyola Chaves; which said strip corresponds to strip No. 10 of the list of strips hereinafter referred to, and is claimed by intervenor and his predecessors in title by virtue of certain unrecorded deeds of conveyance purporting to convey an estate in fee simple thereto, for more than ten years next preceding

the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa, or upland, extending west from the bottom land to the Ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that described in Finding I of Fact herein for more than ten years next preceding the beginning of this action.

On the easterly portion of said strip, that between the Rio Grande and the foothills, said intervener and his predecessors in title have lived in houses which they built, and they have built on, fenced and cultivated such portions of said Valley land as they required for their purposes, crops and stock, for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the Ceja of the Rio Puerco, as set forth in said Finding I of Fact herein."

#### Finding No. LXXXII.

"That Captain Juan González lived upon said Alameda Land Grant, and that there has always been a large number of the heirs of said Captain Juan Gonzales living within the boundaries of said Alameda Land Grant. A portion of the heirs of said Captain Juan Gonzales who lived within said boundaries were: Mariano Gonzales, who is now living upon said grant and has lived there all his life; his father Jose Gonzales; his grandfather Santiago Gonzales, and his great grand father Juan Gonzales, who lived on said grant all their lives; also Juan Antonio Rodarte, who has lived on said grant all his life; also Merced Gonzales and her father Miguel Gonzales, who have lived on said grant all their lives; also Fabiana Gonzales and her father, Jesus Gonzales, who have lived on said grant all their lives; also Candido G. Gonzales and his brother, Conrado A. Gonzales, and his father, Ignacio Gonzales, and his mother Abelina Garcia de Gonzales; also his grandfather, Santiago Gonzales, and his great grandfather, Juan Gonzales; all of whom lived on said land grant all their lives; also Florencio Gonzales, before he went to Lincoln County; also Jose Gonzales and Manuel Gonzales and Sixta Gonzales, brothers and sister of Ignacio Gonzales, who lived on said grant all their lives."

#### Finding No. LXXXIII.

"It appeared, however, and is so found, that from a time farther back than the memory of any witness extended, the greater part of the land within the limits of the grant has been claimed and occupied in strips, as set forth in finding of Fact 1 the land from the foothills to the Ceja of the Rio Puerco in common for pasturage, and the bottom lands generally by those claiming the ownership of them separately, as set forth in said finding. It did not appear that the heirs of Captain Juan Gonzales or any of them living within the boundaries of the grant had ever claimed or asserted any right to or interest in any portion of said land grant except such strips as they claimed respectively until and except as appears from warranty deed from Juan Antonio Rodarte to A. B.

McMillen for an undivided one-twenty-fourth part of said grant, dated January 8th, 1907, and by warranty deed from Merced Gonzales de Romero and Fabiana Gonzales for the undivided one-fifty-sixth part of said grant, dated February 27th, 1907; and it did not appear that they or any of them occupied or used any portion of said grant except as others within the grant occupied and used the strips they claimed, the bottom lands in severalty and the grazing lands in common, as set forth in said Finding of Fact I."

Finding No. 74 gives a list of 162 separate strips of land, together with the name of the owner, the number of varas wide from north to south and a number is given each tract. The terms of the separate decrees in favor of each of the interveners is,

"It is further considered, adjudged and decreed that the intervener, Jose Chaves is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant, bounded and described as follows:

Containing 20 varas in width from north to south and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Felix Tafoya y Gonzales, and on the south by land claimed by Jose Gonzales y Montoya; and which said strip corresponds to strip No. 20 of the list of strips referred to in the Findings of Fact in said cause and in the list of strips annexed hereto and made a part of this decree."

292 The court, in No. 76, 77 and 78, found that the grant was made to Francisco Montes Vigil; that he conveyed the land to Capt. Juan Gonzales, on the 18th day of July, 1712, as alleged, and that the grant was confirmed as a perfect grant.

The record contains translations of exhibits 28, 28A and 28B, purporting to be deeds and a will under which Candido G. Gonzales claims ownership of one certain tract, also exhibits 65, 65 A and 65B, purporting to be conveyances under which Francisco Lucero y Montoya claims ownership. No other testimony, either oral or documentary, is found in the record. The conveyances referred to in the findings of fact, under which intervenors claim ownership, are not found as exhibits in the record, nor is there any evidence tending to dispute the findings that the intervenors and their predecessors in title claimed the lands by virtue of "Certain deeds of conveyance purporting to convey an estate in fee simple." Where the record does not bring up the evidence for examination by the court, the findings of the Court upon questions of fact will not be disturbed in this court.

Cunningham v. Springer, 13 N. M. 290.

There being no specific assignment of error raising this question, and in view of the statement in the brief of counsel for appellants that "no one of the intervenors, by any instrument of writing introduced in evidence showed title in himself coming from Capt. Juan Gonzales."—and the further statement that "while in some cases the length of the possession was questionable, the appellants did not



question the right of the intervenors to the lands actually cultivated or inclosed by them, it must be assumed that the conveyances under which the respective intervenors claimed title were before the court and, together with such other evidence as may have been introduced, supported the findings of the lower court," we are of opinion that

the findings of the trial court are within the principle announced by this court in the cases  
 293 Hamilton Mining Co. v. Hamilton, 14 N. M. 272;  
 Hagerman Irrigation Company v. McMurray;

This brings us to the consideration of the main question in this case, and, in view of the large amount of litigation which has arisen and will no doubt continue to arise in this Territory, the decision of the case will be of great importance. Counsel on both sides seem to desire that the case shall be decided upon its merits and not upon technical grounds, that the rightful owners of the land in controversy may have their titles passed upon and set at rest.

In the partition proceeding, and prior to the setting up of the claims of the intervenors, the Court had rendered a preliminary decree declaring the rights of the partition claimants (the heirs of Capt. Juan Gonzales) to be as follows:

"The parties hereinafter mentioned and to whom the respective undivided interests in said lands are decreed are the owners of said tract of land in fee simple, as tenants in common, in proportions as indicated by the fractions set opposite their respective names, and that no person or persons other than said parties hereinafter mentioned have any interest in or title to said land or any part thereof, in possession, remainder, reversion, or otherwise, except as hereinbefore excepted." but at the close of the case, after rights of the intervenors had been fully litigated, the Court rendered the following final decree:

"It is therefore, ordered, adjudged and decreed that the said intervenors above mentioned are entitled to hold the tracts of land set off to them in the foregoing decree in severalty, free from all claim or claims of the plaintiff in this action and her co-tenants or their successors or assigns. And the plaintiff, her co-tenants and their successors or assigns are enjoined and forever barred from claiming any right, title or interest in or to any of the land  
 294 above described, whether under the decree of partition heretofore entered in this cause or otherwise."

Obviously these decrees are in direct conflict, inasmuch as they relate to the same land, at least to a considerable extent. and the court, recognizing this, set aside the former decree.

The vital question presented by this appeal, then, is, did the Court err in rendering the latter decree? The answer, as disclosed by the learned discussion in the briefs of counsel, and in oral arguments as well, must be found, so far as the intervenors' rights are concerned at least, in the intent and purpose of the legislature of the Territory in the enactment of Chapter 17 of the Laws of 1858. Section one of this chapter, now section 2937 Compiled Laws 1897, is set out in full later on. For forty one years this section remained in its

original form, and but one unimportant amendment has been made to it. In 1899 the legislature made the following amendment by way of substitution, beginning with the first proviso:

"Provided, that if any person entitled to commence or prosecute such suit or action is or shall be, at the time the cause of action therefor first accrued, imprisoned, of unsound mind, or under the age of twenty-one years, then the time for commencing such action shall in favor of such persons be extended so that they shall have one year after the termination of such disability to commence such action; but no cumulative disability shall prevent the bar of the above limitation, and this proviso shall only apply to those disabilities which existed when the cause of action first accrued and to no other." The only changes made by this amendment was to modernize the language of the substituted portion; limit the disabilities for which time to use is given, to those imprisoned, of unsound mind or under the age of 21 years, and to reduce the  
295 time in which suit must be brought after removal of disability from three years to one. It may be said, therefore, that this section is still substantially as it was originally enacted in 1858. It becomes a pertinent inquiry, at this point, as to what were the conditions existing at the time necessitating or making desirable the enactment of such a statute, and in order that we may have a better understanding of the intent and purpose of the legislature in drafting its provisions we will put the inquiry in an interrogative form; what beneficial purpose was such a statute designed to subserve?

We have been impressed with the observations of counsel for the appellees as to the conditions then existing and which demanded a solution such as this law affords, taking the view that this section was not intended to be a statute of limitation and repose merely, but was also intended to grant affirmative relief by way of conferring title upon the pioneer agricultural settlers as a reward of honest toil and diligence, indicating good faith in the settlement and improvement of what was at that time a comparatively barren and sparsely settled section, as indeed the whole Territory was at that time, for that matter.

Going back of the time of the enactment of this statute, an historical reference would seem to be appropriate. The republic of Mexico following the achievement of its independence from the parent country, had continued the policy of granting lands to individuals. These grants were dormant and useless until population made settlement thereon. In the possession of the titled grantee (and we refer to a military title) they were a source of weakness rather than of strength to the province. Prior to the enactment an increasing number of people from year to year were seeking settlement upon these grants and were making use thereof by a civilized  
296 cultivation. Transfers of land embraced within land grants had been made with considerable frequency. This is evident from the very large number of exhibits in the case at bar. Some of the grantees of the grant, when the contest between the

Republic of Mexico and the United States in the War of 1846-47 came on and was ended by the Treaty of Guadalupe Hidalgo, doubtless abjured the province of New Mexico and remained Citizens of the Republic of Mexico. The people of this Territory were thoroughly familiar with the existing conditions and with the prior traditions and practice. It was within the decade following the acquisition of New Mexico by the United States. American and European settlers were coming this way. The native population was also increasing and it was obvious to the people and the law-making power, that efforts would be made, as such efforts are now being made, to disturb grantees, occupiers, heirs, and devisees in their respective possessions held by written evidence of title. Possession that these claimants had lawfully acquired and for which they had paid a consideration. These settlers and occupiers had defended the soil and the people occupying it from the incursions of the Indians. This had been done at a very great sacrifice. The lawmaking power, confronted with these conditions and appreciating the necessity for legal protection not only from fictitious claimants but from claimants who had long slept upon their rights as well, enacted this statute and thus assured protection to persons possession land described in their deeds, assurances and devisees, in their bona fide claims or ownership. The legislature, therefore, enacted the statute in question and intended to create, and did create, a right and title as to real property acquired in a land grant and provided another and different rule of limitation as to real property which might be adversely acquired under Section 2938.

It should be understood that, so far as this case is concerned, the construction placed upon section 2937, supra, is made applicable to Spanish or Mexican Land Grant only, as the grant lands herein described are within such a grant. The grants of lands by the United States, which might be of a very different nature, are not deemed pertinent to the decision of this case.

Before advertng to Section 2938, the section which appellants insist is controlling as to appellees' claims, we will examine section 2937 somewhat more in detail. It is not, and cannot be successfully denied, that the section provides an absolute limitation of the right to bring suit either in law or equity after the lapse of ten years, as against those in possession within the terms of the act, except where disability to sue exists, when suit may be brought within one year after the disability has ceased to exist. We need not further consider that provision of the section. But there is much more in this section, for the act is made specifically applicable to lands "granted by the governments of Spain, Mexico and the United States, or whatever authority empowered by said Governments to make grants of land." The Alameda Grant, being an individual grant in private ownership, there can be no doubt of the application of this section to the lands embraced in the Alameda Grant, which had been in existence for one hundred and forty-eight years at the time this statute was enacted. Even at the time this law was passed these grants were largely owned by heirs and assigns of original grantees, and these heirs would, naturally, be widely sep-

arated from each other and few if any of them in actual occupation of the lands. The lands being unoccupied and uncultivated, induced settlers to enter upon them and for many years before and after the American occupation these settlers have been occupying, cultivating and grazing these lands and purchasing, selling and devising and assigning them by deeds, wills and other documents and in  
298 good faith claiming the ownership of the lands, notwithstanding these title documents may not be traceable to the real heirs or owners of the Grant.

Now this act provides that all of those persons, their children, heirs or assigns who were in possession of portions of these lands for ten years, claiming them under the provisions of the Act at the time of its enactment or at any time thereafter "shall have a good and indefeasible title in fee simple to such lands, tenements and hereditaments." This fee simple title is conferred upon all those who have complied with the conditions prescribed by the Act. The conditions imposed are set forth in the act in clear unambiguous language as follows:

"In all cases where any person or persons, their children, heirs or assigns, shall at the passing of this act or at any time thereafter, having had possession for ten years of any lands, tenements or hereditaments which have been granted by the governments of Spain, Mexico or the United States or by whatsoever authority empowered by said governments to make grants to lands, holding or claiming the same by virtue of a deed or deeds of conveyance, devise, grant or other assurance purporting to convey an estate in fee simple, and no claim by suit in law or equity effectually prosecuted shall have been set up or made to the said lands, tenements or hereditaments, within the aforesaid time of ten years, then and in that case, the person or persons, their children, heirs or assigns, so holding possession as aforesaid, shall be entitled to keep and hold in possession such quantity of lands as shall be specified and described in his, her or their deed of conveyance, devise, grant or other assurance as aforesaid, in preference to all, and against all, and all manner of person or persons whatsoever; and any person or persons, their children or their heirs or assigns, who shall neglect or who have neglected for the said term of ten years to avail themselves of  
299 the benefit of any title, legal or equitable, which he, she or they may have to any lands, tenements or hereditaments, within this Territory, by suit of law or equity effectually prosecuted against the person or persons so as aforesaid in possession, shall be forever barred, and the person or persons, their children, heirs or assigns so holding or keeping possession as aforesaid by the term of ten years, shall have a good and indefeasible title in fee simple to such lands, tenements or hereditaments."

Comparing the requirements of this section with the evidence as disclosed in the findings of fact, some of which are set out in full in a former part of this opinion, it cannot be doubted that the intervenors, with possibly two exceptions, to be referred to later, have met all of the requirements of the statute, and even more than the statutory requirements.

These settlers have been in possession for the time required, cultivating and improving the valley lands, although the statute is silent as to that, nor does it define the character of possession as prescribed by section 2938 as amended, in relation to title by adverse possession. Appellees were holding and claiming certain described strips of land a certain number of varas wide from north to south and extending from the eastern to the western boundaries of the grant, claiming the lands under deeds of conveyance purporting to convey to them a fee simple title, and no suit has been either instituted or prosecuted by the appellants or any other person as provided for in the act. \* Indeed, it is not insisted that any such suit was instituted by the appellants, except the present action. The contention of appellants that the intervenors did not show written title from the heirs of Capt. Juan Gonzales, falls to the ground under this section for the reason that only color of title is required.

Color of title has been repeatedly defined by both text writers and the Courts:

299½ "The courts have concurred, it is believed, without an exception in defining 'color of title' to be that which in appearance is title, but which in reality is no title.' They have equally concurred in attaching no exclusive or peculiar character or importance to the ground of the invalidity of an apparent or colorable title; the inquiry with them has been, whether there was an apparent or colorable title, under which an entry or claim has been made in good faith. The authorities seem to be conclusive to the point, that a claim to property, under conveyance, however inadequate to carry the true title to such property, and however incompetent might have been the power of the grantor in such conveyance to pass a title to the subject thereof, yet a claim asserted under the provision of such a deed is strictly a claim under color of title, and one which will draw to the possession of the grantee the protection of the statute of limitations, other requisites of those statutes being complied with. This subject was somewhat recently before the Supreme Court of the United States, and the former decisions of that court upon the question were elaborately examined, and the conclusion was declared in accordance with these views, and it was decided that what is color of title is matter of law, and when the facts exhibiting the title are shown, the court will determine whether they amount to color of title. But good faith in the party, in claiming under such color, is a question of fact for the jury."

Tyler on Ejectment and Adverse Enjoyment, pp. 872, 873.

In *Wright v. Mattison*, 18 How. 50, the Court says:

"We deem it unnecessary to examine in detail the numerous decisions adduced in the argument for the plaintiff in error, to define and establish the meaning of the phrase 'color of title.' The courts have concurred it is believed with- an exception in defining 'color of title' to be that which in appearance is title, but which in reality is no title. They have equally concurred in attaching no exclusive or peculiar character or importance to the ground of the invalidity of an apparent or a colorable



title; the inquiry with them has been whether there was an apparent or colorable title, under which an entry or a claim has been made in good faith."

The above case is a leading one and is supported by a long line of cases, both in the United States and state courts.

Schrimpscher v. Stockton 183 U. S. 298;

Cameron v. United States, 148 U. S. 307.

In the case of *Lea v. Polk County Copper Co.*, 21 How. 493, the court says:

"Where a person was in possession, this was sufficient notice to a claimant of an adverse title; and whether the deed under which this person claimed, was registered or not was of no importance to the claimant. The act of limitations of the State of Tennessee protects persons in possession of land under the following circumstances: 'First, they must have had seven years' possession of land granted by the state; second, they must have held or claimed the land by virtue of a deed of conveyance, or other assurance, purporting to convey an estate in fee simple; third, no claim by suit in law or equity, effectually prosecuted should have been set up or made to said lands within that time.' Under the second head, an unregistered deed is sufficient to constitute the bar. The deed, when recorded, related back to its date."

We refer to this case, not only to support the doctrine of color of title, but because of the declaration therein that it is immaterial whether the claimant's deed is recorded or not. In the findings of fact in this case it is shown in some cases that the deed of conveyance under which certain interveners claimed title had not been recorded.

*Packard v. Moss*, 68 Cal. 128.

301 The court found that Capt. Juan Gonzales and a large number of his heirs lived within the boundaries of the Alameda Grant and a few of them are mentioned in one of the findings; but the court further finds, in No. 83, that,

"It did not appear that the heirs of Capt. Juan Gonzales or any of them living within the boundaries of the grant, had ever claimed or asserted any right to or interest in any portion of said land except such strips as they claimed respectively, until and except as appears from warranty deed from Juan Antonio Rodarte to A. B. McMillan for an undivided one-twenty-fourth part of the grant, dated January 8th, 1907, and by a warranty deed from Merced Gonzales de Romero and Fabian Gonzales for the undivided one-fifty-sixth part of the grant, dated February 27th, 1907; and it did not appear that they or any of them occupied or used any portion of the grant except as the other strip owners occupied and used theirs."

It was also found that from a time farther back than the memory of any witness extended, the greater part of the land within the grant has been claimed and occupied in strips, as set forth in Finding No. 1.

Persons of the same name appear in the lists of claimants on both

sides, and, under the above finding, they may be the same persons. The record does not inform us upon this point.

An examination of Sec. 2937 shows that the fee simple title provided for ripens even against the rightful heirs or true owners of the Grant. The section provides that it shall accrue "against all, and all manner of person or persons whatsoever and any person or persons, their children or their heirs or assigns, who shall neglect or who have neglected for the said term of ten years, to avail themselves of the benefit of any title, legal or equitable, which he, she or they may have to any lands, tenements or hereditaments, within this Territory, by suit of law or equity effectually prosecuted against the person or persons so as aforesaid in possession, shall be forever barred." This language is not ambiguous, it needs no construction, and there is no reservation or limitation in it which would protect the heirs of Capt. Juan Gonzales, admitting that they were the true owners of the Grant, from the operation of this provision and from the maturing of a fee simple title against them.

The rule of law is well settled that where one is in actual possession of a portion of the tract under color of title, his possession will be presumed to extend by construction to the limits of the land described in his deed. This is too well settled to require the citation of authorities to support it. Indeed, appellants' counsel, in his brief, concedes this in almost identical language. Applying this doctrine to the interveners in this case, it being admitted that they actually occupied and cultivated that portion of their strips of land lying in the valley, such possession would extend to the entire tract described, including the grazing lands on the mesa. And the court finds that they actually used the lands other than cultivated for pasturage and grazing, the only use of which the lands were susceptible, so that their possession does not rest alone upon the legal presumption of possession.

From the review of the case thus far, it is difficult to see how the court in the final decree rendered in this case committed error, unless Sec. 2937 supra be either ignored or declared void. No attack is made upon the validity of the section, nor any suggestion that it has been repealed, but a different construction is contended for. The construction sought to be placed upon this section by appellant's counsel is, in his own language, as follows:

"Our view of the meaning of that statute is that no one can claim under it except those who are claiming through a grant from Spain, Mexico, or the United States, and that in order to show that he has such claim he must trace by documents a derivative chain of title from one of those sources. In no other way

can the peculiar wording of this statute be given meaning; in other words, it is the purpose of that statute to cure titles which are imperfect, because some deed in the chain of title is imperfect."

This construction seems to require so much more than the section specifies, as to place it in direct conflict with it. The conveyances required by the section are "deed or deeds of conveyance, devise, grant or other assurance purporting to convey an estate in fee

simple." One deed or a devise by will seems to meet the requirement, provided it purports to convey a fee simple title. Indeed, the construction contended for, carried to its logical conclusion, would render it impossible to obtain any benefit whatever under the statute, and it seems to us that such a construction is plainly inconsistent with the remedial purpose and intent of the legislature which enacted it, as indicated by the unambiguous language used. Where language used in a statute is plain and unambiguous, it is not the subject of construction.

It is further contended, "that in order to acquire title by adverse possession all of the requirements above mentioned are absolutely essential, and the courts of this Territory have steadily adhered to that rule. That in order to constitute adverse possession it must be actual, open, visible, notorious, continuous, exclusive, hostile, and under claim of right."

This is a correct statement of the law as to the acquirement of title by adverse possession under ordinary limitation statutes such as are commonly enacted, where title enures simply by reason of a limitation and not by virtue of a fee simple title provided as an affirmative right, as in section 2937.

Section 2938 Comp. Laws 1897, is a general statute of limitation pure and simple with direct application to titles sought to be  
304 acquired by adverse possession for the same length of time required by section 2937, and both of these sections formed parts of chapter 17 Laws 1858. Section 2938 was Sec. 2 of chapter 17 Laws of 1858. This section has been materially amended by two legislatures, and as amended is as follows:

"SECTION 2938. No person or persons, nor their children or heirs, shall have, sue or maintain any action or suit, either in law or equity, for any lands, tenements or hereditaments, against any one having adverse possession of the same continuously in good faith, under color of title, but within ten years next after his, her or their right to commence, have or maintain such suit shall have come, fallen or accrued, and all suits, either in law or equity, for the recovery of any lands, tenements or hereditaments so held, shall be commenced within ten years next after the cause of action therefor has accrued: Provided, that if any person entitled to commence of prosecute such suit or action is or shall be, at the time the cause of action therefor first accrued, imprisoned, of unsound mind, or under the age of twenty-one years, then the time for commencing such action shall in favor of such persons be extended so that they shall have one year after the termination of such disability to commence such action, but no cumulative disability shall prevent the bar of the above limitation, and this proviso shall only apply to those disabilities which existed when the cause of action first accrued, and to no other. 'Adverse possession' is defined to be an actual and visible appropriation of land, commenced and continued under a color of title and claim of right inconsistent with and hostile to the claim of another; and in no case must 'adverse possession' be considered established within the meaning of the law, unless the party claiming adverse possession, his predecessors or grantors, have for

the period mentioned in this section continuously paid all the taxes, territorial, county and municipal, which during that period  
305 have been levied upon the land or interest claimed, whether assessed in his name or that of another." This section was amended by chapter 63 Laws 1899, but the only substantial change made was the addition of the following provision:

"Against any one having adverse possession of the same continuously in good faith, under color of title, and who has paid taxes lawfully assessed against the same." and fixing one year instead of three as to those under disabilities specified.

In 1905 this section was further amended by the addition of the significant clause beginning with the definition of adverse possession in the section above quoted.

It will be seen, therefore, that while section 2938 has been amended so as to require color of title in good faith, payment of taxes, and made specifically an adverse possession statute, and the term 'adverse possession' has been defined by the statute, not one of these provisions have been inserted by amendment in section 2937. The latter section remains practically unchanged. Counsel for appellants insist strenuously that the only title appellees have is by adverse possession. It appears, however, that the section under which they claim, makes no mention of adverse possession notwithstanding the companion section of the same act has been amended to so provide. There seems to be no foundation for this contention by appellants, so far as the statute indicates, as the reverse seems to have been the intention of the legislature. Nor are the intervenors tenants in common as among themselves, as they claim in severalty and independently of each other; nor are they tenants in common, or co-tenants with the heirs of Capt. Juan Gonzales as they do not claim to own the grant or any interest in the grant as such, as heirs of undivided interest, and they deny that they are tenants  
306 in common with appellants, who claim to be the true owners of the grant in undivided interests. Consequently the possession of the intervenors cannot be the possession of all, in the sense that the possession of one co-tenant is the possession of all other co-tenants.

Intervenors claim in severalty separately described tracts of land, to which title in fee simple has ripened in each of them under section 2937 supra, and not by adverse possession except in a general sense. They hold under a statute which provides that when they have complied with the terms of the statute they shall have a fee simple title, and "They shall be entitled to keep and hold in possession such quantity of lands as shall be specified and described in his, or her or their deeds of conveyance, devise, grant or other assurance as aforesaid in preference to all and against all and all manner of person or persons whatsoever." The contention of appellant's counsel, which is deserving of most serious consideration, is that announced in the case of *Hunnicut v. Peyton* 102 U. S. 333, in which the court says:

"Where the rightful owner is in the actual occupancy of a part of his tract, he is in the constructive and legal possession and seisin of

the whole, unless he is disseised by actual occupation and dispossession, and where the possession is mixed, the legal seisin is according to the legal title, so that in the case at bar there could be no constructive possession on the part of the defendant or his grantors, even if that might exist if he has had actual possession of a part, and no one had been in possession of the remainder."

This doctrine has been adopted and announced by this court in the case of *Jenkins v. The Maxwell Land Grant Co., et al.* 107 Pac. 739, and other cases. It seems to have been applied by the courts in all of the applicable cases which have been examined wherein claimants have sought, by adverse possession to hold lands even against the owner of the true title. It will be observed, however, that these are cases where the assertion of title by adverse possession is based upon statutory provisions similar to those of Sec. 2938, supra, which bars a right by action after the statutory period of time has elapsed. The claimants by adverse possession in these cases do not assert title, but merely the bar of the statute denying a right of action even to the owner of the true title.

Section 2938 Comp. Laws 1897, is the law of this Territory upon which claims of adverse possession are based, and is purely a statute of limitation which does not purport to give an affirmative title in fee simple, as does Section 2937 above referred to.

The case of *Probst v. Presbyterian Church*, 129 U. S. 182, is instructive upon this point. This case arose in the city of Santa Fe, under Sec. 81 Comp. Laws of 1884, which is identical with Sec. 2938 Comp. Laws 1897, prior to its amendment. At this time this section did not require either color of title or payment of taxes to be shown in support of the claim of adverse possession. The Supreme Court of New Mexico substantially held that possession for the statutory period was insufficient, but that color of title was also required. The Supreme Court of the United States, upon appeal reversed the lower court, using the following language:

"Nor is it necessary that the defendant shall have a paper title under which he claims possession. It is sufficient that he asserts ownership of the land, and that this assertion is accompanied by an uninterrupted possession. It is this which constitutes adverse possession, claiming himself to be the owner of the land. This is a claim adverse to everybody else, and the possession is adverse when it is held under this claim of ownership, whether that ownership depends upon a written instrument, inheritance, a deed, or even an instrument which may not convey all the lands in controversy. If defendant asserts his right to own the land in dispute, asserts his right to the possession, and his possession is adverse and uninterrupted it constitutes a bar which the statute intended to give to the defendant."

The latest declaration of this court upon this subject is in the case of *John Jenkins v. The Maxwell Land Grant Co., et al.*, which case is also instructive upon the question of mixed possession. While the case was a comparatively recent one, it was claimed that the inception of the adverse possession was prior to the amendment of



the statute requiring color of title and payment of taxes to be shown, and this was not questioned. Upon the question of mixed possession, however, the defendants invoked the doctrine laid down in the case of *Hunnicutt v. Payton*, *supra*, and it was sustained and applied. From the facts in that case it appeared that Jenkins lived and made small improvements upon a tract of about thirty acres of land, cultivated about five acres, but in addition he claimed, by adverse possession, more than six thousand acres of timber and grazing lands, not by fencing or marking the boundaries thereof, but because he and his family rode around what he claimed to be his boundaries and drove the stock of other parties from the lands. It further appeared, however, that the Maxwell Land Grant Company was the owner of the true title and that during all of the years Jenkins resided there the Company had headquarters and agents in Raton, which was upon the Grant, and that the agents of the Company mined and prospected for coal, and permitted other parties to do so also, upon the land and near Jenkins' house; that they leased portions of the Jenkins' land, as well as other portions of the Grant; grazed large herds of stock upon the lands; in short, the agents of the true owner used the lands as freely as if Jenkins had not been there. The Court properly held in that case that the owner of the true title, by its agents, was in actual possession of a portion of the Grant and therefore its seizin extended to all of the Grant not actually occupied by Jenkins, which could not in any event extend to more than the thirty acres upon which

309 Jenkins lived. As was said in the *Hunnicutt* case,

"The reason is plain. Both parties cannot be seized at the same time of the same land under different title. The law therefore adjudges the seizin of all that is not in the actual occupancy of the adverse party, to him who has the better title."

Appellants claim the ownership of what they denominate the Common lands, under deeds of conveyance from Juan A. Rodarte, Merced Gonzales de Romero and Fabian Gonzales of date 1907, to Alonzo B. McMillan, upon the theory that Montoya and the grantors of Mr. McMillan, being heirs of Captain Juan Gonzales, deceased, and in possession of a part of the Alameda Grant, were owners of the true title to those lands; that the common lands are not in the actual but only in the constructive possession of the interveners, are therefore drawn to the true title by conclusive legal presumption, conceding a mixed possession to have existed.

Finding of Fact No. 1 described the nature of the possession and use of the lands involved, as follows:

"The interveners claim strips of land within the Alameda Grant very narrow in proportion to their length, most of them being only a few yards in width each, and extending from the Rio Grande west to the ceja, or ridge, dividing the watershed of the Rio Grande from that of the Rio Puerco, and forming the western boundary of the grant, a distance of about sixteen miles. Most of them include land between the Rio Grande and the foothills at the west of the valley, which is adapted to cultivation, and the land extending from the foothills to the ceja of the Rio Puerco,

which is adapted to grazing only. Most of the interveners live on the easterly ends of the strips of land they claim, and cultivate such portions of the bottom lands between the river and foothills in the respective strips as they require. Near the river the land is what is termed bosque; that is land covered with a growth of brush, trees and wild grass, and is used for pasturage. In 310 the valley the strips of land are to some extent separated by fences and to some extent the bosque is separated in that way from the cultivated lands. From the foothills west there are no fences, nor are there any fences at the western boundaries of the strips or of the grant. By stipulation between the parties the titles to the lands between the river and the foothills are not to be determined in this action, but that does not exclude the evidentiary bearing, if any, which the use, occupation and claims of possession and ownership of these lands by interveners respectfully, so far as they appear in evidence, may have on their use, occupation and claims of possession respectively of the lands extending westerly from the foothills. The last named land bears a scanty growth of grass and other herbage and is without water, it being customary and necessary to have animals pastured there go to the Rio Grande for water at intervals of three or four days, except for short and infrequent periods when their needs are supplied by rain or snow. By agreement, or common understanding, which has ripened into a general custom, the interveners and their predecessors in claim of ownership have used those westerly portions of the strips they claimed, in common with each other and with others claiming ownership in the grant, no one attempting to keep his animals exclusively on the land he claimed nor requiring others claiming ownership to keep their animals off such land. To some extent those who were not claiming ownership of any land within the grant pastured their animals on the portion of it in question west of the foothills and on the strips claimed by the interveners with the other animals pastured there, without objection by those who claimed the strips, but without their consent, except as they failed to take active measure to prevent such intrusion. This method of use was the one most convenient, economical and advantageous to the interveners and as to all the strips, except the northern one of Gonzales the only practicable one because of the size and shape of the respective strips which would make the expense of fencing 311 them greatly disproportionate to their value, the character and location of the land, the scantiness of herbage and the lack of water upon it, and for no other reasons appearing in the evidence."

If the interveners relied upon adverse possession under Sec. 2938, there can be little doubt but that the circumstances under which these mesa lands were held would constitute constructiveness possession, such as would, by legal presumption, adhere to the true title. If, however, the conclusion of the court in the construction of Sec. 2937 are correct, as we regard them, this is not a proceeding in adverse possession under Sec. 2938, so far as the interveners rights are involved, but is a proceeding under Sec. 2937 in which in-

terveners rely upon a fee simple title by deeds under the terms of the statute. As we have seen, a fee simple title matured under Sec. 2937, diverts the title of the true owner as well as all others, and such being the case, the laws as laid down in the case of Hunnicutt v. Peyton, supra, would seem to be inapplicable to the case now under consideration. It is true, there is an adverse possession required to mature title under Sec. 2937, but it is not the same as under Sec. 2938. This section was amended by Sec. 2, Chap. 63, Laws 1899, so as to require color of title and payment of taxes, as above stated, and by Chap. 76, Laws of 1905, was again amended as follows:

“ ‘Adverse possession’ is defined to be an actual and visible appropriation of land, commenced and continued under a color of title and claim of right inconsistent with and hostile to the claim of another; and in no case must ‘adverse possession’ be considered established within the meaning of the law, unless the party claiming adverse possession, his predecessors or grantors, have for the period mentioned in this section continuously paid all the taxes, territorial, county and municipal, which during that period have been levied upon the land or interest claimed, whether assessed in his name or that of another.”

312 Now, the fact that neither of these amendments were made applicable to the next preceding section, but were made specifically applicable to Sec. 2938, is quite significant and we think indicates the intention of the legislature not to make these requirements applicable to the section of the statute which confers a fee simple title as provided for in Sec. 2937.

In this case, under the findings of fact, the interveners claim severally, strips of land “under deeds of conveyance purporting to convey an estate in fee simple” accompanied by residence and cultivation as to bottom lands, and the timber and grazing lands were used for the only purpose for which they were suitable, as the findings state, for more than ten years. These conveyances define the boundaries of such strips, from which it appears that the timber and grazing lands are included in the boundaries, as well as the residence and cultivated lands. The interveners, being actual occupants and in possession of the lands embraced in their deeds, would have the right to use them in such manner as they saw fit and we see no reason why they should not use them as other owners of deeded lands may do.

The final decree has a provision as to each of the interveners similar in terms to that of Jose Chaves, which is as follows:

“It is further considered, adjudged and decreed that the intervenor, Jose Chaves is the owner in fee simple absolute and in severalty of the following described strip, tract and parcel of land situate within the limits of the Alameda Land Grant; bounded and described as follows:

Containing 20 varas in width from north to south, and in length extending from the Rio Grande on the east to the Ceja of the Rio Puerco on the west, and bounded on the north by land claimed by Felix Tafoya y Gonzales, and on the south by land claimed by

Jose Gonzales y Montoya; and which said strip corresponds to strip No. 20 of the list of strips referred to in the Findings of fact in said cause and in the list of strips annexed hereto and 313 made a part of this decree."

The interveners, by this decree, hold their respective tracts of land as "Owners in fee simple absolute and in severalty" to the exterior boundaries of the description given in their deeds, there being no limitation in the deeds.

In order to invoke the doctrine laid down in the case of Hunnicutt v. Peyton, *supra*, it is essential that the owners of the true title, or his heirs or agents, shall be in actual possession of some part of the lands while claiming the whole of the lands. It is clear, from Finding of Fact No. 83, that the heirs of Juan Gonzales who resided in this land, did not claim to own the whole grant, nor even the common lands. Upon this point the Court found as follows:

"It appeared, however, and is so found, that from a time farther back than the memory of any witness extended, the greater part of the land within the limits of the grant has been claimed and occupied in strips, as set forth in finding of Fact 1, the land from the foothills to the Ceja of the Rio Puerco in common for pastureage, and the bottom lands generally by those claiming the ownership of them separately, as set forth in said finding. It did not appear that the heirs of Captain Juan Gonzales or any of them living within the boundaries of the grant had ever claimed or asserted any right to or interest in any portion of said land grant except such strips as they claimed respectively until and except as appears from warranty deed from Juan Antonio Rodarte to A. B. McMillen for an undivided one-twenty-fourth part of said grant, dated January 8th, 1907, and by warranty deed from Merced Gonzales de Romero and Fabiana Gonzales for the undivided one-fifty-sixth part of said grant, dated February 27th, 1907; and it did not appear that they or any of them occupied or used any portion of said grant except as others within the grant occupied and used the strips they claimed, the bottom lands in severalty and the grazing lands in common, as set forth in said Finding of Fact I."

314 From this finding it appears that Vicente Montoya, appellant, and the grantors of McMillan were strip owners only and never made any claim to ownership of any lands of the Alameda Grant other than described in the small strips on which they respectively resided. In other words, they held their lands just as they held their trusts. Therefore, they did not claim to own the whole grant, or all the common lands thereof as heirs of Captain Juan Gonzales, but only claimed to own and be in possession of the small strip upon which their residences were. If this is true they were not in position to invoke the presumption insisted upon by appellant's counsel, nor are they within the doctrine announced in the Hunnicutt case. Indeed, the Interveners, being in possession of a part, claiming certain strips of land described in deeds of conveyance, are the parties to whom the benefit of this presumption would enure to the extent of the lands embraced within the exterior boundaries of their respective deeds.

There are two tracts of land claimed by Candidato G. Gonzales and Francisco Lueco y Montoya as to which the findings are somewhat different, in this; that neither of them ever lived upon or improved any portion of the lands described in the conveyances under which they claim ownership. As to the Gonzales tract, which is the last of several tracts he claims, the following finding of fact was made by the court:

"The Rio Grande now runs close to the foothills by this land, and there is practically no meadow land between the foothills and the river. Formerly there was a strip of bottom land between the Rio Grande and the foothills which formed a part of the tract herein claimed by the intervener, but neither he nor his predecessors in title, nor any other person so far as the evidence shows, ever cultivated, enclosed, erected buildings or lived upon any part of said tract, or made any use of it except for grazing, as set forth in Finding of Fact I.

The court further finds that the description of the real estate in said Exhibit No. 28 was originally of a tract of land 610 315 varas wide, and that said description was so altered as to describe the land as being 1610 varas wide; but the court is unable to find when said alteration was made, except that it was made after the original instrument was written, in a different ink, and was made some time prior to the year 1883."

While it may be that lapse of time may have cured defects suggested by appellants' counsel to the documentary evidence of title admitted at the trial, the fact that no actual possession was ever established on any portion of this tract we are disposed to regard as fatal to a recovery by Gonzales of this particular tract, and the same may be said of the Lucero y Montoya tracts covered by exhibits 65, 65 A and 65 B, as no actual possession of any part of those lands was established although part of the lands were capable of cultivation.

We have just sustained the possession of the interveners to the Mesa lands adjoining the valley land, by reason of its use for grazing purposes, but this was done upon the ground that by reason of actual residence, cultivation, improvements and other visible occupancy of a part of the lands embraced in their deeds, by conclusive legal presumption this possession extended to the whole tract embraced in the conveyances. But, even under section 2937 deeds alone are not sufficient, unaccompanied by actual occupation of at least a part of the tract, to mature a fee simple title in ten years. The possession is as essential to that end as the deed, but both are necessary. As to those tracts, there never has been actual visible possession of any part of the lands, therefore, conceding that the conveyances were valid, fee simple title could not mature under the circumstances of this case.

*Bergere v. United States* 168 U. S. 66;

*Whitney v. United States* 168 U. S. 529;

A peculiar and quite unusual situation exists in this case. A decree of partition was entered and the unoccupied lands were declared to be the property of the appellant and a large number of the heirs and assigns named in the decree. The decree did not state that they



316 were in possession of the lands, but did declare them to be owners of certain interest therein. This decree was entered before the rights of the interveners were declared. This decree was not formally set aside by the court, but, in effect, was modified to the extent of the lands awarded to the interveners in the final decree upon the intervention. The effect of the decree in partition is to award to the partition claimants the ownership of all lands involved in this proceeding not carved out of the Alameda Grant by the decrees in favor of the interveners. Fee simple title not having matured in favor of Candido G. Gonzales and Francisco Lucero y Montoya to these particular tracts, the decree in partition is operative upon those lands and awards them to the partition claimants, thereby divesting those interveners, Gonzales and Lucero, of any interest therein.

We do not deem it necessary to consider the other questions raised as to these lands. The assignments of error will be overruled in so far as they challenge the correctness of the decree of the court in favor of the interveners and the decree will be affirmed in so far as it relates to all of the tracts owned by the interveners, but will be sustained as to the two last mentioned tracts and as to those the decree will be reversed and the cause will be remanded for further proceeding in accordance with the views herein expressed.

JOHN R. McFIE,  
*Associate Justice.*

We concur:

WILLIAM H. POPE, *C. J.*  
FRANK W. PARKER, *A. J.*  
E. R. WRIGHT, *A. J.*  
MERRITT C. MECHEM, *A. J.*

Justice Abbott having tried the case below did not participate.

317 And Afterwards, on to wit, on the 8th day of December, A. D., 1911, there was filed in the office of the Clerk of the Supreme Court of the Territory of New Mexico, an opinion by the court adhering to its former decision in the above entitled cause, which said opinion by the court adhering to its former decision was and is in the following words and figures to wit:

318 In the Supreme Court of the Territory of New Mexico, January Term, A. D., 1911.

No. 1325.

VICENTE MONTOTOYA, Plaintiff,

vs.

UNKNOWN HEIRS OF FRANCISCO MONTES VIGIL, Deceased, et al.,  
Defendants, Appellant; Candido G. Gonzales et al., Interveners,  
Appellee.

Appeal from District Court, Bernalillo County.

*Memorandum Opinion on Rehearing.*

McFIE, J.:

The Motion for rehearing in this case raises but one question and that the unconstitutionality of section 2937, Compiled Laws of New Mexico, and the court having considered this question, together with the oral arguments and briefs of the respective counsel, adheres to the opinion heretofore rendered.

Counsel for appellants is in error in the suggestion that the court holds in the original opinion that section 2937, supra, is not a statute of limitation, as it is apparent from the original opinion that this section is a statute of limitation, but goes further and points out that it is not solely a statute of limitation in the same sense as is that provided for in section 2938, Compiled laws 1897, but, being limited to a specific classification of lands, that of land grants, it is more than ordinary statute of limitation and provides for certain affirmative relief following the expiration of the period of limitation, such as is deemed specifically applicable to the condition of grant  
319 lands as the same existed at the time section 2937, supra, was enacted. The period of ten years fixed the statute for all those seeking to avoid its operation is deemed a reasonable time and meets the suggestion that this section does not provide due process of law. We are of the opinion that the fact that this section has been in existence in substantially its original form for about sixty years, whereas section 2938 has been substantially amended, indicates that section 2937, supra, was enacted to meet the peculiar conditions existing in this Territory in that early day concerning the particular land classified in the section, and, as applied to the peculiar conditions existing at the time, this section of the statute is not obnoxious to the constitutional objections sought to be raised in the motion for rehearing. The original opinion, therefore, will be adhered to as the opinion of the court in this case.

JOHN R. MCFIE,  
*Associate Justice.*

We Concur:

WILLIAM H. POPE, C. J.  
FRANK W. PARKER, A. J.  
MERRITT C. MECHEM, A. J.  
CLARENCE J. ROBERTS, A. J.

In view of the matters raised on the rehearing, I am unable to adhere to the former opinion and therefore withdraw my concurrence and here indicate my dissent because of the question raised upon reargument.

E. R. WRIGHT,  
*Associate Justice.*

Abbott, A. J., having tried the cause did not participate.

320 STATE OF NEW MEXICO,  
*Supreme Court, ss:*

I, Jose D. Sena, Clerk of the Supreme Court of the State of New Mexico, do hereby certify that the above and foregoing three hundred and nineteen (319) pages contain a full, true, correct and complete transcript of the record and proceedings, pleadings and opinions in the above entitled cause, as by the præcipe herein, heretofore filed, which hereby is transmitted to the Supreme Court of the United States, in accordance with an appeal heretofore granted by the Supreme Court of the Territory of New Mexico.

Witness my hand and the seal of the Supreme Court of New Mexico, this the 12th day of February, A. D., 1912.

[Seal Supreme Court, Territory of New Mexico.]

JOSE D. SENA,  
*Clerk Supreme Court of New Mexico.*

Endorsed on cover: File No. 23,078. New Mexico Territory Supreme Court. Term No. 204. Vicenta Montoya and The Unknown Heirs of Francisco Montes Vigil, deceased, et al., appellants, vs. Candido G. Gonzales et al. Filed March 4th, 1912. File No. 23,078.

Office Supreme Court, U. S.  
**FILED**  
JAN 24 1914  
JAMES D. MAHER  
CLERK

# Appellant's Brief.

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**IN THE SUPREME COURT OF THE UNITED STATES**  
**OCTOBER TERM 1913**

**No. 204**

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VICENTA MONTOYA AND THE UNKNOWN  
HEIRS OF FRANCISCO MONTES VIGIL,  
DECEASED, ET AL., *Appellants*,

v.

CANDIDO G. GONZALES, ET AL.

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Appeal from the Supreme Court of New Mexico.

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ALONZO B. McMILLEN,  
Attorney for Appellant.

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SUPREME COURT OF THE UNITED  
STATES.

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October Term, 1913.

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No. 204.

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VICENTA MONTOYA AND THE UNKNOWN  
HEIRS OF FRANCISCO MONTES VIGIL,  
DECEASED, ET AL., *Appellants*,

v.

CANDIDO G. GONZALES, ET AL.

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APPELLANTS' BRIEF.

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STATEMENT OF FACTS.

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I.

This action was commenced by Vicenta Montoya, the plaintiff in this cause, on the 12th day of June, 1906, for the partition of a tract of land known as the Alameda Land Grant.

The defendants' names were: "The unknown heirs of Francisco Montes Vigil, deceased; the unknown heirs of Juan Gonzales, deceased, and all unknown owners of the real estate described in said complaint."

The necessary affidavit for service by publication was made, and notice by publication duly given.

(2)

On the 9th day of August, 1906, a decree was entered by which it was adjudged that said publication of notice to defendants was in all respects regular and in accordance with law, and that the defendants and each of them were duly served by publication and were in default for appearance.

Said service and publication were duly approved by the court and said complaint taken as confessed, and Harry P. Owen was duly appointed as referee, with instructions to take the evidence produced by the respective parties and to report the same to the court, with his findings of fact and conclusions of law (record, pp. 1 to 7.)

On March 16, 1907, Bonifacio Montoya and thirty other defendants filed their answer and joined in the prayer for partition (record, p. 8).

On February 24th, 1909, A. B. McMillen also filed an answer and joined in prayer for partition (record, p. 33).

The referee having taken evidence and reported the same to the court with his findings as provided in the decree appointing him, a final decree was entered on the 17th day of June, 1907, by which the allegations of the complaint were found to be true, and the owners of said land established, it being found that about five hundred persons named in said decree were the owners of said grant, and partition of said land was awarded.

Among other things it was found by the court that:

*"the parties hereinafter mentioned and to whom the respective undivided interests in said lands are decreed are the owners of said tract of land in fee simple, as tenants in common, in proportions as indicated by the fractions set opposite their respective names, and that no person or persons other than said parties hereinafter mentioned have any interest in or title to said land or any part thereof, in possession, remainder, reversion, or otherwise, except as hereinbefore excepted.*

*"The court doth therefore order, adjudge and decree that the persons hereinafter mentioned are entitled to and hereby are declared to own an undivided interest in said premises in fee simple, the interest owned by each being indicated by the fraction set opposite his name, to-wit: (Then follow the names of owners, together with fractional interests.) (Record, pp. 9 to 21.)*

The commissioners appointed by said decree made affidavit and report as required by law on July 5, 1907 (record, pp. 21 to 23).

Afterwards, on the 20th day of November, 1907, the court, without vacating or setting aside said decree, made an order allowing the intervention complained of. (Record, p. 23.)

We make no point upon the proceedings leading up to the order of intervention, except that the decree of partition, in so far as it established title, was final, and that no valid order could be made permitting an intervention upon the part of ad-

verse claimants as long as said decree remained in force.

On November 20, 1907, the interveners, with the exception of Candido G. Gonzales, filed their joint answer, which is informal, but was not questioned for that reason. (Record, pp. 24 to 27.)

The reply thereto consisted of a general denial (record, p. 27).

Candido G. Gonzales filed a separate answer, found on pages 28 to 32, to which a general denial was filed.

After the court had announced its intention of holding in favor of the interveners, but before the findings of fact and the formal decree had been fully determined upon, the court, upon the motion of the plaintiff, gave judgment confirming the report of the commissioners and ordering sale of the real estate in question, except that the sale should be subject to the rights of said interveners respectively, as established by such order, judgment and decree, as shall be finally made in favor of said interveners respectively, either in this court or in any proper appellate court on appeal. (Record, pp. 35 to 37.)

On the 4th day of January, 1910, the court filed the findings of fact relative to said intervention (record, pp. 37 to 97), the last finding of fact being as follows:

*"That the foregoing findings are all the facts shown by the evidence relative or material to the claim of the interveners*

(5)

*represented by George S. Klock and A. A. Sedillo."*

Attached to said findings is a conclusion of law based upon said findings, to which appellants excepted. (Record, p. 97.)

A final decree upon the intervention was entered on the same day, January 4, 1910, based on the findings of fact and conclusion of law above mentioned, to which also appellants excepted. (Record, pp. 97 to 124.)

From said final decree upon the intervention an appeal was taken.

The facts as shown by the proceedings in this cause are substantially as follows:

(a) The Alameda Land Grant, the subject of this suit, is situated in the counties of Bernalillo and Sandoval, north of Albuquerque, and contains 89,346 acres of land. On the 2nd day of January, 1710, the Marquez de la Panuela, by authority of the King of Spain, and in accordance with the royal laws, usages and customs of Spain in force and effect in the then province of New Mexico, made a grant of said tract of land to Francisco Montes Vigil in consideration of and as a reward for military services, and juridical possession of said tract was duly given to said grantee on the 27th day of January, 1710.

(b) On the 18th day of July, 1712, the grantee, Francisco Montes Vigil, conveyed said tract of land to Captain Juan Gonzales, and the said grant of land, and also said conveyance, was afterwards,



on the 18th day of September, 1713, duly presented by said Captain Juan Gonzales to Juan Isidoro Flores Mogollon, the then governor and captain-general of the then province of New Mexico; which said grant and the transfer thereof to the said Juan Gonzales was thereupon duly approved by the said governor and captain-general.

(c) Afterwards, at the November term of the United States Court of Private Land Claims, held at Santa Fe, in the Territory of New Mexico, said grant was duly approved and confirmed to the heirs, assigns and legal representatives of said Francisco Montes Vigil, and his grantee, Captain Juan Gonzales. These facts will appear from the allegations of the complaint (record, p. 2); the decree of partition (record, p. 10) and the findings of fact (pp. 93-94).

(d) The plaintiff alleged in her complaint that a portion of said tract of land in the Rio Grande valley, lying east of the foothills and below the irrigating ditches, is occupied by various persons and claimed in severalty by reason of original allotments, or by adverse possession; the amount of which said land so occupied and the names of the persons claiming to own said lands in severalty and the description of the lands so occupied are to plaintiff unknown; and it was asked that partition be made subject to the rights of said occupants in severalty.

(e) Plaintiff further alleged that all of the lands lying west of the irrigating ditches and foot-

hills, and also a portion of the lands lying east of said irrigating ditches and foothills in the Rio Grande valley are held and occupied by said plaintiff and the defendants other than the unknown heirs of Francisco Montes Vigil as tenants in common. (Record, p.2.)

(f) The decree of partition (record, pp. 9 to 23) finds the allegations of the complaint to be true and fully sets forth and determines the rights of the tenants in common, and there is no contention among them.

(g) The Alameda Land Grant is about eight miles wide from north to south and about seventeen miles long from east to west, the western boundary being at or near the ceja of the Rio Puerco; the eastern boundary at or near the Rio Grande.

The land near the Rio Grande and the foothills is agricultural land, capable of being irrigated by ordinary ditches, and a portion of said land is cultivated and improved by persons claiming to own the same in severalty. All the land west of the valley is what is called "mesa land" and fit only for grazing purposes under ordinary conditions. The lands claimed by interveners consist of strips usually extending from the Rio Grande to the ceja of the Rio Puerco, and a part of the portion of said strips in the valley is usually cultivated or enclosed; but in no case is all of the valley land cultivated or enclosed, and in no case is any of the mesa land cultivated or enclosed or

in any way used except for pasturing of stock, in common with each other and others. Only a portion of the Alameda Grant is claimed by interveners.

Commencing at the south line of said Alameda Land Grant and measuring north there is a vacant strip of land within said land grant 84.41 chains wide from north to south, extending from the Rio Grande to the western limits of said grant.

Then beginning 26.20 chains north of said last-mentioned tract is another vacant tract measuring 22.35 chains wide from north to south and extending from the Rio Grande to the western limits of said grant.

18 chains north of the last mentioned tract is another tract of land measuring 56.95 chains from north to south, and extending from the Rio Grande to the western limits of said grant.

26 chains north of that strip is another vacant strip 5 chains wide from north to south and extending from the Rio Grande to the western limits of said grant.

No person lives upon any of said tracts, and there are no buildings, enclosures or improvements of any kind thereon, and no person, so far as the evidence shows, ever cultivated, enclosed, erected buildings or lived upon any part of said tracts or made any use of them, except for grazing, in common with others; and said tracts are not claimed by any of the interveners.

Between the Jemez road, running in a westerly

direction across the mesa, and the Arroyo Baranca, is another strip 76.80 chains wide from north to south and extending from the Rio Grande to the western limits of said grant. No person lives upon said tract and there are no buildings, enclosures or improvements of any kind thereon except that a fence was built within the past eighteen months, and during the pendency of this suit, fencing the south and west sides of the narrow valley adjoining the Rio Grande, and no person, so far as the evidence shows, ever cultivated, enclosed, erected buildings or lived upon any part of said tract or made any use of it except for grazing, in common with others.

From the Arroyo Baranca to the north line of said grant, a distance of over one mile, there is no valley land; which said strip extends from the Rio Grande to the western limits of said grant, and no person lives upon said tract and there are no buildings, enclosures or improvements of any kind thereon, and no person, so far as the evidence shows, ever cultivated, enclosed, erected buildings or lived upon any part of said tract or made any use of it except for grazing, in common with others.

In other words, there are four miles, or one-half of the grant in width from north to south not actually occupied by any one. In addition, 70 out of the 162 strips set out by interveners were not found by the court to be possessed by anyone.

Beginning at the north line of the grant, and for

something over a mile to the south, the Rio Grande runs against the foothills, and there is no valley land whatever. Then the valley gradually widens out until it is about  $1\frac{1}{2}$  miles to 2 miles wide, near the center of the grant; and then gradually narrows down until it is about one-half a mile wide at the south line of the grant. (Finding 80, p. 94.)

These facts are graphically shown on the map referred to in finding 79, p. 94, and certificate of court, p. 134, transmitted with the original papers in this case.

(h) No one of the interveners, by any instrument of writing introduced in evidence showed title in himself coming from Captain Juan Gonzales (finding 81, p. 95), but their right to the strips claimed depends entirely upon their claim of adverse possession under color of title. *It appears, however, that Captain Juan Gonzales lived upon said land grant, and that there has always been a large number of the heirs of said Captain Juan Gonzales living within the boundaries of said grant, a number of whom are mentioned in the finding, (finding 82, page 95), and that the heirs of Captain Juan Gonzales are shown in the genealogy filed in this cause by Harry P. Owen, referee, and transmitted with the original documents, because not capable of being copied in the printed record (finding 84, p. 96); and none of the interveners had actual possession except of very small portions of cultivated or enclosed lands within the strips claimed, their title to the portion of the*



grant in controversy being under claim of constructive possession. (Record, p. 38.)

While in some cases the length of the possession was questionable, the appellants did not question the right of the interveners to the lands actually cultivated or enclosed by them.

Finding 1 of fact, pp. 37 to 38 of the printed record, covers practically all of the elements in favor of the claims of interveners; and then follow specific findings relative to the several strips not covered in full by the general findings.

Some of the deeds under which interveners claim have been recorded, but many of them are unrecorded. As examples of unrecorded deeds, see the following:

Jose Felipe Silva .....	(Record, p. 38)	
Jose Felipe Silva .....	" "	39
Jose Felipe Silva .....	" "	39
Jose Chaves .....	" "	45
Jose Chaves .....	" "	45
Borja C. de Martinez and Trini- dad Candelaria .....	" "	46
Juan Montoya .....	" "	46
Felix Tafoya y Gonzales.....	" "	47
Melquiades Martinez .....	" "	47
Andres Gallegos .....	" "	48
Alejandro Sandoval .....	" "	51
Alejandro Sandoval .....	" "	52
Heirs of Antonio Jose Gonzales..	" "	53
Heirs of Manuel Antonio Perea..	" "	56
Heirs of Manuel Antonio Perea..	" "	57

Guadalupe Gutierrez de Martinez	"	"	59
Jose Leon Gutierrez.....	"	"	65
Jesus Maria Gutierrez.....	"	"	72
Angelo Salce and Luis Salce.....	"	"	73
Teofilo Perea .....	"	"	75
Elias Martinez .....	"	"	78
Jose Ramon Tenorio.....	"	"	79

There were other questions raised in the record affecting the claims of Candido G. Gonzales under his exhibits 65, 65-A and 65-B, and claim of Francisco Lucero y Montoya under his exhibits 28, 28-A and 28-B; but as the judgment of the district court was reversed as to those claims and the judgment entered which should have been entered denying those claims and that judgment is unappealed from, it is unnecessary to consider that portion of the record involving those claims.

From the judgment of the court in favor of interveners the plaintiffs and defendants found to be the owners of said Alameda Grant appealed to the Supreme Court of New Mexico. The judgment of the district court was reversed as to the lands contained in exhibits 28, 28-B, 65, 65-A and 65-B, shown on record pages 125 to 133, and in other respects was affirmed. (Record, pp. 139 and 147.) The part thus eliminated by the judgment of the supreme court amounted to about one-fifth of the lands involved in the appeal.

A motion for re-hearing was filed by appellants (record, pp. 140 to 144) upon the ground that section 2937, Compiled Laws of New Mexico, as con-

strued by the opinion of the Supreme Court of New Mexico violated certain provisions of the Constitution of the United States which will be more fully hereinafter set out.

We call particular attention to this motion shown in record, pages 140 to 144.

A re-hearing was granted (record, p. 144); and after argument by counsel was taken under advisement upon the constitutional questions involved; but the contention of appellant was overruled.

There was a motion to re-tax costs in favor of appellants, who succeeded in reversing the action of the district court as to two of the interveners and involving about one-fifth of the land in dispute under the provisions of section 3148 of the Compiled Laws as construed by the Supreme Court of New Mexico, but the court denied the motion and taxed the costs on a so-called per capita basis, ordering that the 458 successful appellants and the two unsuccessful appellees should pay the amount of the costs per capita, which required the appellants to pay the sum of \$330.51 and the appellees the sum of \$1.44 (record, pp. 147 and 148).

The first opinion of the court is found pages 155 to 180, and on re-hearing, page 181, Associate Justice Wright dissenting.

From the final judgment of the Supreme Court of New Mexico an appeal was taken to this court and errors assigned as follows:

### ASSIGNMENTS OF ERROR.

Come now the appellants in the above cause and being dissatisfied with the final judgment of the court in said cause and desiring to appeal to the Supreme Court of the United States, assign errors as follows:

#### I.

The court erred insofar as it affirmed the judgment of the district court.

#### II.

The court erred in holding that section 2937, Compiled Laws of New Mexico of 1897, as construed by the court did not conflict with provisions of the Constitution of the United States, as contended for in appellants' motion for a rehearing.

#### III.

The court erred insofar as it affirmed said decree of the district court, because said section 2937 as construed by the court violates fundamental rights and takes the property of the appellants without due process of law, as guaranteed by the fifth amendment to the Constitution of the United States.

#### IV.

The court erred in refusing to award costs to appellants as provided by section 3148 of the Compiled Laws of New Mexico, and in awarding costs on the so-called per capita basis.

#### V.

The district court erred in allowing the inter-

vention of Candido G. Gonzales and others on the 20th day of November, 1907, after final decree of partition and adjudging the appellants to be the owners of the real estate involved by decree entered 17th day of June, 1907, the court having adjudged in said decree of partition that the said appellants

“Are the owners of said tract of land in fee simple, as tenants in common, in proportions as indicated by the fractions set opposite their respective names, and that no person or persons other than said parties hereinafter mentioned (appellants) have any interest in or title to said land or any part thereof in possession, remainder, reversion or otherwise, except as hereinbefore excepted.”

Said interveners claiming adversely to the appellants and in opposition to said partition proceedings and said decree of partition being final as to ownership of appellants and the adverse claims of interveners, and said final decree of partition not having been vacated or set aside, and the Supreme Court of the Territory of New Mexico erred in affirming the district court in that respect in this case.

## VI.

The district court erred in concluding as a matter of law upon the findings of fact set forth in the record of this cause:

“That each and every intervener is en-



titled in severalty and in fee simple absolute to the portion and portions of land described in the finding of fact relating thereto; to which reference is made for further definition and identification, and that the plaintiff herein and the heirs of Captain Juan Gonzales are barred thereof forever."

To which conclusion of law the appellants at the time excepted, and the Supreme Court of the Territory of New Mexico erred in affirming the district court in that respect.

#### VII.

The district court erred in adjudging and decreeing that Jose Felipe Silva is the owner in fee simple, absolute and in severalty of the strips of land set forth after the name of the said Silva in the final decree of intervention, and the Supreme Court of the Territory of New Mexico erred in sustaining the district court in that respect.

#### VIII.

The district court erred in adjudging and decreeing that Candido G. Gonzales is the owner in fee simple, absolute and in severalty of the lands set forth in said final decree as the property of said Gonzales, and the Supreme Court of the Territory of New Mexico erred in affirming the district court in that respect.

#### IX.

The district court erred in adjudging and decreeing that each of the interveners mentioned in said decree are the owners in fee simple, absolute

and in severalty or otherwise of the real estate following their respective names, it being the intention to assign as error each of the said portions of said final decree in which it was adjudged and decreed that the respective interveners mentioned in said decree were the owners of the tracts of land following their respective names, as fully as if this assignment stated a separate assignment of error as to each and every one of the interveners mentioned in said final decree of partition, and the Supreme Court of the Territory of New Mexico erred in affirming the action of the district court in that respect.

#### X.

The district court erred in ordering, adjudging and decreeing:

"That the said interveners above mentioned (in said decree) are entitled to hold the tracts of land set off to them in the foregoing decree in severalty, free from all claim or claims of the plaintiff in this action and her co-tenants or their successors or assigns; and the said plaintiff, her co-tenants and their successors and assigns are enjoined and forever barred from claiming any right, title or interest in or to any of the said lands above described, whether under the decree of partition heretofore entered in this cause, or otherwise."

And the Supreme Court of the Territory of New Mexico erred in affirming the district court in that respect.

## XI.

The district court erred in not finding and decreeing the issues raised by said intervention in favor of the appellants and against said interveners, and the Supreme Court of the Territory of New Mexico erred in affirming the district court in that respect.

## XII.

The district court erred in rendering a final decree on intervention entirely inconsistent with and contradictory of the final decree of partition, after the same had become final and absolute as between the appellants and interveners and without said final decree of partition having been vacated or set aside, and the Supreme Court of the Territory of New Mexico erred in affirming the district court in that respect.

Wherefore, appellants pray that the judgment of the Supreme Court of the Territory of New Mexico be reversed and held for naught and that said cause be remanded with directions that the decree of the district court be reversed and that the said appellants be restored to all things lost by reason of the judgment of the Supreme Court of the Territory of New Mexico and the said decree by the District Court of Bernalillo County. (See record, pp. 149 to 151.)

For convenience, we copy all statutes coming to our knowledge bearing upon the question of claim of title on account of adverse possession:

"In all cases where any person or persons, their children, heirs or assigns, shall at the passing of this act or at any time after, *having had possession for ten years* of any lands, tenements or hereditaments which have been granted by the governments of Spain, Mexico or the United States, or by whatsoever authority empowered by said governments, to make grants to lands, holding or claiming the same by virtue of a deed or deeds of conveyance, devise, grant, or other assurance purporting to convey an estate in fee simple, and no claim by suit in law or equity effectually prosecuted shall have been set up or made to the said lands, tenements or hereditaments, within the aforesaid time of ten years, then and in that case the person or persons, their children, heirs or assigns, so holding possession as aforesaid, shall be entitled to keep and hold in possession such quantity of lands as shall be specified and described in his, her or their deed of conveyance, devise, grant or other assurance as aforesaid, in preference to all, and against all, and all manner of person or persons whatsoever; and any person or persons, their children or their heirs or assigns, who shall neglect or who have neglected for the said term of ten years, to avail themselves of the benefit of any title, legal or equitable, which he, she or they may have to any lands, tenements or hereditaments, within this territory, by suit of law or equity effectually prosecuted against the person or persons so as aforesaid in possession, shall be forever barred, and the person or persons,

their children, heirs or assigns *so holding or keeping possession as aforesaid by the term of ten years*, shall have a good and indefeasible title in fee simple to such lands, tenements or hereditaments: Provided, That if any person or persons that have been, are, or shall be entitled to commence and prosecute such suit in law or equity, shall have been, be or shall be, at the time of said right or title first descended, or accrued, come or fallen within the age of twenty-one years, *feme covert, non compos mentis*, imprisoned, or beyond the limits of the United States and the territories thereof, that then such person or persons, his, her, or their children, heirs or assigns shall or may, notwithstanding the ten years be expired, bring his or her legal or equitable action, as he, she or they might have done before the passage of this act, so as such person or persons, or his, her or their children, heirs or assigns, shall within three years next after his, her or their full age, discovery, coming of sound mind, enlargement out of prison, coming into the United States or the territories thereof, or death, take benefit of and commence such suit, and at no time after the said three years: Provided, also, That in the construction of this saving provision, no cumulative disability shall prevent the bar aforesaid, but shall only apply to that or those disabilities which existed when the right to sue first accrued, and no other; and Provided, also, that such suit so commenced shall be a suit prosecuted with effect, and no other."

*Section 2937, Compiled Laws of N. M., 1897.*



“No person or persons, nor their children or heirs, shall have, sue or maintain any action or suit, either in law or equity, for any lands, tenements or hereditaments but within ten years next after his, her or their right to commence, have or maintain such suit shall have come, fallen or accrued, and that all suits, either in law or equity, for the recovery of any lands, tenements or hereditaments shall be had and sued within ten years next after the title or cause of action or suits accrued or fallen, and at no time after the ten years shall have passed: Provided, That if any person or persons that is or shall be entitled to commence and prosecute such suit or action in law or equity be or shall be, at the time of said right or title first accrued, come or fallen within the age of twenty-one years, *feme covert, non compos mentis*, imprisoned or beyond the limits of the United States and the territories thereof, that then such person or persons, his, her or their children, heirs or assigns, shall and may, notwithstanding the said ten years be expired, bring his or her suit or action, as he, she or they might have done before the passage of this act, so as such person or persons, his, her or their children, heirs or assigns, shall within three years next after his, her or their full age, discovery, coming of sound mind, enlargement out of prison, coming into the United States or the territories thereof, or death, take benefit of and commence such suit, at no time after the said three years. Provided, also, That in the construction of this saving exception, no

cumulative disability shall prevent this bar, but shall only apply to that or those disabilities which existed at the time when the right to sue first accrued, and to no other. Provided, further, That such action so commenced shall be an action prosecuted with effect, and no other."

*Section 2938, Compiled Laws of N. M., 1897.*

"That section two thousand nine hundred and thirty-eight of the Compiled Laws of 1897 is amended so as to read as follows:

"Section 2938. No person or persons, nor their children or heirs, shall have, sue or maintain any action or suit, either in law or equity, for any lands, tenements or hereditaments, against any one having adverse possession of the same continuously in good faith, under color of title *and who has paid the taxes lawfully assessed against the same*, but within ten years next after his, her or their right to commence, have or maintain such suit shall have come, fallen or accrued, and all suits, either in law or equity, for the recovery of any lands, tenements or hereditaments so held, shall be commenced within ten years next after the cause of action therefor has accrued. Provided, that if any person entitled to commence or prosecute such suit or action is or shall be, at the time the cause of action therefor first accrued, imprisoned, of unsound mind, or under the age of twenty-one years, then the time for the commencing such action shall in favor of such persons be extended so that they shall have one

year after the termination of such disability to commence such action; but no cumulative disability shall prevent the bar of the above limitation, and this proviso shall only apply to those disabilities which existed when the cause of action first accrued, and to no other."

*Section 2, Chapter 63, Laws of 1899, p. 133.*

"That Section 2 of Chapter 63 of the Session Laws of 1899, approved March 16, 1899, be and the same hereby is amended to read as follows:

"Sec. 2: That Section 2938 of the Compiled Laws of 1897 is amended so as to read as follows:

"Section 2938. No person or persons, nor their children or heirs, shall have, sue or maintain any action or suit, either in law or equity, for any lands, tenements or hereditaments, against any one having adverse possession of the same continuously in good faith, under color of title, but within ten years next after his, her or their right to commence, have or maintain such suit shall have come, fallen or accrued, and all suits, either in law or equity, for the recovery of any lands, tenements or hereditaments so held, shall be commenced within ten years next after the cause of action therefor has accrued: Provided, That if any person entitled to commence or prosecute such suit or action is or shall be, at the time the cause of action therefor first accrued, imprisoned, of unsound mind, or under the age of twenty-one years, then the time for commencing such action shall in favor

of such persons be extended so that they shall have one year after the termination of such disability to commence such action, but no cumulative disability shall prevent the bar of the above limitation, and this proviso shall only apply to those disabilities which existed when the cause of action first accrued, and to no other. 'Adverse possession' is defined to be an actual and visible appropriation of land, commenced and continued under a color of title and claim of right inconsistent with and hostile to the claim of another; and in no case must 'adverse possession' be considered established within the meaning of the law, unless the party claiming adverse possession, his predecessors or grantors, have for the period mentioned in this section continuously paid all the taxes, territorial, county and municipal, which during that period have been levied upon the land or interest claimed, whether assessed in his name or that of another."

*Section 1, Chapter 76, Laws of 1905, p. 139.*

#### POINTS AND AUTHORITIES.

This case comes before this court upon the pleadings and the findings of fact and law by the district court adopted by the Supreme Court of New Mexico.

The title of the plaintiff and her co-tenants to the Alameda Grant is conclusively established by the judgment and findings of the district court. (Record, pp. 9 to 21.)

A valid grant of this tract of land was made to

Francisco Montes Vigil in January, 1710. (Finding 76, p. 94.)

A valid transfer was made by Vigil to Captain Juan Gonzales in July, 1712, and confirmed by the proper authorities in September, 1713. (Finding 77, p. 94.)

Said grant and transfer were duly confirmed to Francisco Montes Vigil and his grantee, Captain Juan Gonzales, and to his heirs, assigns and legal representatives at the November term, 1893, by the United States Court of Private Land Claims. (Finding 78, p. 94.)

*Captain Juan Gonzales and his heirs have always lived upon said grant.* (Finding 82, p. 95.)

No one of the interveners, by any instrument in writing introduced in evidence, showed title in himself coming from the grantee, Captain Juan Gonzales. (Finding 81, p. 95.)

The heirs of Captain Juan Gonzales are shown in the genealogy transmitted to this court (finding 84, p. 96); and the heirs, assigns and legal representatives of Captain Juan Gonzales who own the Alameda Grant are fully set forth in the decree of the district court awarding partition (record, pp. 9 to 21); and the court specifically finds that no person or persons other than said parties mentioned in said decree have any interest in or title to said land or any part thereof, in possession, remainder, reversion or otherwise, except as to certain rights reserved in paragraph 1 of decree (record, p. 11); the exception did not refer



to interveners' claims, and said decree has never been vacated, set aside or modified

The plaintiff and her co-tenants having shown a perfect legal title and possession of the grantee and his heirs down to the present time, certain presumptions prevail:

(1) Possession in accordance with the legal title is presumed:

*Gonzales v. Ross*, 120 U. S. 605, 629.

*Chesapeake, etc., Ry. v. Washington, etc., Ry.*, 199 U. S., 247, 249.

(2) All presumptions are in favor of the legal holder, and the burden of overcoming them rests with him who assails the legal title:

*Evans v. Welch, Cal.*, 68, Pac. 79.

1 *Washburn Real Property*, p. 63.

(3) It is a presumption of law that possession of one co-tenant is possession of all:

*Mining Company v. Taylor*, 100 U. S. 37, 40.

*McClung v Ross*, 5 Wheat., 116, 124.

*Barr v. Grats*, 4 Wheat., 213, 222.

*Armijo v. Neher*, 11 N. M., 645, 651.

*Stevens v. Martin*, 168 Mo., 407, 68 S. W. 347.

*Freeman Co-tenancy and Partition*, Sections 166, 167 and 222.

1 *Washburn Real Property*, p. 689.

(4) If several persons have a mixed possession of land and one of them has title to it, the seisin belongs to him only:

1 *Washburn Real Property*, p. 63.

(5) It is a conclusive presumption of law that where two persons are in possession of land at the same time, under different titles, the law adjudges him to have the seisin of the estate who has the better right. Both cannot be seised, and therefore the seisin follows the title:

*Barr v. Gratz*, 4 *Wheat.*, 213, 223.

*Brownsville v. Cavazos*, 100 *U. S.*, 138, 145.

(6) It is also conclusive presumption of law that where the rightful owner is in the actual occupancy of a part of his tract he is in the constructive and legal possession, and seisin of the whole, unless he is disseised by actual occupation and dispossession; and where the possession is mixed the legal seisin is according to the legal title.

*Per Chief Justice Fuller, in Deputron v. Young*, 134 *U. S.*, 241, 254.

*Ward v. Cochran*, 150 *U. S.*, 597, 605, 608.

*Hunneycutt v. Peyton*, 102 *U. S.*, 333, 367-369.

*Bracken v. U. P. Ry. Co. (C. C. A.) 75 Fed. 347.*

The district court having fully established by its findings and decree that the plaintiff and her co-tenants were the legal owners of the Alameda Grant and every presumption being in favor of such legal title, let us consider by what right the same court found in favor of interveners as to a part of said Alameda Land Grant.

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I.

OUR FIRST ASSIGNMENT OF ERROR IS BASED UPON THE PROPOSITION THAT THE DECREE OF PARTITION WAS A FINAL JUDGMENT AS TO ALL ADVERSE CLAIMANTS, AND THAT NOTHING REMAINED TO BE DONE EXCEPT TO CARRY OUT THE PROVISIONS OF THE STATUTE BY A DIVISION OF THE LANDS OR ITS PROCEEDS AMONG THE CO-TENANTS.

We recognize the fact that under the old practice the decree of partition was not a final judgment from which an appeal could be taken, the main object of the proceeding being a division of property where the titles were undisputed. Modern statutes have greatly broadened the scope of partition proceedings, and our statute makes it possible to determine in the partition proceedings practically every question of title that might arise, and

allows an appeal therefrom. See *Baca v. Anaya*, 14 N. M., 389.

*Sec. 1, Ch. 57, Laws 1907.*

All of those questions must necessarily be determined by the decree of partition before the commissioners can act, for the reason that the commissioners cannot take into consideration any question of title, but must have a fixed and binding decree upon which to act.

In this case the decree of partition had been regularly entered and the commissioners had duly qualified and made their report before any attempt to intervene.

Our decree of partition determines questions quite as important as a judgment in ejectment or a decree of foreclosure, and nothing is left to be done after the decree of partition except a division of the property; or in case it cannot be divided, a sale of the property and division of the proceeds.

Whatever the rule may have been formerly as to the character of a partition decree, there is no reason under our present proceedings why it should not be regarded as a final judgment.

Indeed, such judgments are declared final judgments by statute:

“Appeals or writs of error may also be taken from final judgments or decrees in actions for partition that determine the

rights and interests of the respective parties and direct partition to be made."

*Section 1, Chap. 57, Laws of 1907, p. 106.*

If the partition judgment was a final judgment, then there could be no other judgment entered in the cause in conflict therewith without first setting the same aside.

Mr. Freeman in his work on judgments says:

"When a judgment is once entered of record it must stand as the judgment until it is vacated, modified or disposed of by some means provided by law. Entering additional judgment entries is not one of them."

*Freeman on Judgments, 4th ed., sec. 104-A.*

It would be the greatest folly to render a decree of partition and then proceed to retry the questions there determined without first vacating or setting aside the decree. The authorities universally hold that until the decree of partition is vacated or set aside the court is without power to proceed to consider or determine any question already determined by such decree.

*1 Freeman on Judgments, sections 304 and 307 and ca. ci.*

*30 Cyc., paragraph 8, p. 253 and ca. ci.*



- Keil v. West*, 21 Fla. 508.  
*Irwin v. Buckels*, 148 Ind. 389; 47 N. E. 822.  
*Janes v. Brown*, 48 Ia. 568.  
*Traverso v. Row*, 11 La. 498.  
*Allen v. Hall*, 50 Maine 253.  
*Ham v. Ham*, 39 Me. 216.  
*Patridge v. Lute*, 36 Me. 16.  
*Slingluff v. Stanley*, 66 Md. 220; 7 Atl. 261.  
*Pfeltz v. Pfeltz*, 1 Md. Ch. 455.  
*Mt. Hope Iron Co. v. Dearden*, 140 Mass.  
 430; 4 N. E. 803.  
*Burghardt v. Van Deusen*, 4 Allen 374.  
*Brown v. Bulkley*, 11 Cush. 168.  
*Foster v. Jones (Miss.)* 17 Southern 893.  
*Hinds v. Stevens*, 45 Mo. 209.  
*Rockwell v. Decker*, 5 N. Y. Civ. Proc. 62.  
*Grimes v. Taft*, 98 N. C. 193, 3 S. E. 674.  
*Clemens' Appeal*, 8 Pa. cases, 321; 11 Atl.  
 529.  
*Johnson v. Murray*, 12 Lea, 109.  
*Petrucio v. Seardon*, 76 Tex. 639, 13 S. W.  
 560.

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## II.

ASSIGNMENTS OF ERROR 6 TO 12 IN-  
 CLUSIVE RAISE THE QUESTION THAT  
 THE FINDINGS OF THE COURT DO NOT  
 WARRANT A DECREE IN FAVOR OF IN-  
 TervenERS OR ANY ONE OF THEM.

Our contention is that the findings of the Dis-

strict Court are entirely insufficient to support the decree in favor of interveners.

The interveners claim that they have acquired title to the strips claimed by them by adverse possession. The general character of that possession is quite fully set forth in the first finding of fact by the court, found on pp. 37 and 38. of the record. A summary of that finding is as follows: The strips claimed are very narrow, some of them only a few varas in width, and extending from east to west a distance of about seventeen miles. Most of the claimants live upon the eastern portion of the strip that they claim, in the Rio Grande valley, having actual possession, with their houses and improvements, or by cultivation or enclosure of small tracts of land. Their rights to so much of these tracts as are in their actual possession, by cultivation or enclosure, etc., are fully protected by the decree of partition. The land near the river is bosque, and used only for pasturage, and the mesa lands are used only for grazing. The whole of the Alameda Land Grant except the small tracts that are cultivated or enclosed has always been used in common, for grazing of the stock of the co-tenants, the claimants of the strips, and also by others outside of the grant.

The rest of the findings apply to particular individuals, and in most cases show that the interveners claim title by virtue of certain deeds of conveyance purporting to convey an estate in fee simple, for more than ten years next preceding the

beginning of this action, and have had such possession as described in Finding 1 of Fact. The facts are practically the same as to each intervenor and as to each strip claimed, with the following exceptions:

Many of the deeds under which claim is made were never recorded. These are referred to in the statement of facts.

Taking into consideration the finding of the court that no one of the intervenors, by any instrument in writing introduced in evidence, showed title in himself coming from Captain Juan Gonzales, it is apparent that the claim made by intervenors is based wholly upon deeds that do not convey title to the lands in dispute.

The proposition that such deeds without possession would be superior to the deeds that de-rain title from the sovereign would be absurd.

We recognize the proposition that in ordinary cases where one is in actual possession of a portion of the tract under color of title, his possession will be presumed to extend by construction to the limits of the lands described in his deed.

Our contention is that while this rule would ordinarily apply where there is no conflict of possession, it does not apply to a case of this kind, for the reason that many heirs of Captain Juan Gonzales have always lived upon this grant and that the title of Captain Juan Gonzales and his heirs being perfect, the possession of any tenant in common is possession of all, and such possession extends

to the boundaries of the grant under such perfect title, except as to such tracts as are in the actual adverse and exclusive possession of some other person.

It is evident that there cannot be at the same time constructive possession in two persons whose claims are adverse to each other. It must follow, then, that where such constructive possessions conflict, the constructive possession which the law will recognize must either follow the good title or the bad title—it cannot follow both. It would be an evident absurdity to say the bad title is superior to the good; consequently, under the admitted state of the facts in this case, it must be held that the constructive possession of all the portions of the grant not actually occupied adversely to them was in the heirs of Captain Juan Gonzales; consequently interveners could have no title by adverse possession beyond the limits of the land that they actually occupied, by cultivation, enclosure or other exclusive possession, and could claim nothing by constructive possession under color of title.

Inasmuch as the plaintiff and her co-tenants were in possession of the Alameda Grant under a valid legal title, it must necessarily follow, under the authorities above cited, that the interveners could not have constructive possession of any lands and could acquire no rights except in lands of which they had actual, physical dominion, and that the constructive possession of the unoccupied

lands followed the legal title, and consequently have at all times been in possession of the plaintiff and her co-tenants under the findings of the court.

The character of the possession of interveners shown by the findings of the court falls far short of the requisites for adverse possession.

1. As to some strips there is no possession whatever.

2. As to all strips there is no actual possession of the portions in dispute.

3. The only use made of the disputed portions was for grazing in common with others, and the same use was made by each of all other portions of the Alameda Grant except the cultivated lands.

4. As to the disputed portion of these strips, possession was not actual or open or visible or notorious or continuous or exclusive or hostile, or under claim of right.

The possession was not actual, because there is no pretense that the mesa lands were used by anyone except for pasture of stock which ranged on and off the land at will.

It was not open, visible or notorious, because not different from what was done by every other person in that vicinity, and because each intervener used other portions of the grant in exactly the same manner as the strip claimed.

It was not continuous, for the very reason that the acts of possession claimed are necessarily occasional, the lands not being under fence or capable of continuous dominion, all stock of claimants



and others grazing on and off at will.

It was not exclusive or hostile, for the reason that the evidence showed that everyone used the land in the same way, even those who did not pretend to own any interest in the grant; and the use of the mesa or common lands by the interveners was not different from that of its use by the plaintiff and her co-tenants.

5. No taxes were paid, as required by chapter 63, of the laws of 1899, and chapter 76, of the laws of 1905.

It is a settled rule of law that where a statute requires payment of taxes as an element of adverse possession, that it is necessary for the adverse claimant to show such payment of taxes during the full period necessary to establish adverse possession:

*Beaver v. Taylor*, 1 Wallace 637.

*Warvelle on Ejectment*, Sec. 342.

*Wettig v. Bowman*, 47 Ill., 17.

*Power v. Kitching*, 10 N. D., 254.

*Raynolds v. Willard*, 80 Cal., 605.

*Irwin v. Miller*, 23 Ill., 401.

*Cosfield v. Furry*, 19 Ill., 183.

*Snowden v. Rush*, 76 Tex., 197; 13 S. W., 189.

*Harden v. Gouveneur*, 69 Ill. 140.

The authorities fully establish the proposition that in order to acquire title by adverse possession

all of the requirements above mentioned are absolutely essential, and the courts of New Mexico have steadily adhered to that rule.

That in order to constitute adverse possession it must be actual, open, visible, notorious, continuous, exclusive, hostile, and under claim of right, see the following authorities:

- Johnson v. Albuquerque*, 12 N. M., 20; 72 Pac., 9.  
*Gentile v. Kennedy*, 8 N. M., 347-354; 45 Pac., 879.  
*Probst v. Trustees*, 3 N. M., 373; 5 Pac., 702.  
*Jenkins v. Maxwell Land Grant Co., et al.*, (N. M.), 107 Pac., 739.  
*Armstrong v. Morrill*, 14 Wall., 120, 145.  
*Hogan v. Kurtz*, 94 U. S., 773.  
*Ward v. Cochran*, 150 U. S., 597, 606.  
*Clark's Lessee v. Courtney*, 5 Peters, 319.  
*Hunnicutt v. Peyton*, 102 U. S., 368.  
*Barr v. Gratz*, 4 Wheaton, 223.  
*Brownville v. Cavazos*, 100 U. S., 138, 145.  
*Deputron v. Young*, 134 U. S. 241, 254.  
*Bracken v. Union Pacific Ry. (C. C. A.)*, 75 Fed 347.

The section of the statute that the interveners think particularly applicable, is section 2937. That section, instead of being broader than the section following, we consider to be much more restricted. The view of the interveners was that it applies

strictly to land grants, because it uses the term lands "which have been granted by the governments of Spain, Mexico or the United States;" but it is evident to anyone familiar with the history of this country that those terms cover the only source of title possible in the Territory of New Mexico. It is a matter of history familiar to everyone, that from the time of the discovery of this country until the establishment of the Republic of Mexico, the government of Spain exercised dominion over New Mexico, and that from the establishment of the Republic of Mexico until the treaty of Guadalupe Hidalgo the Republic of Mexico was the sovereign in control; and that since that the United States is the sovereign.

Our view of the meaning of that statute is that no one can claim under it except those who are claiming through a grant from Spain, Mexico, or the United States, and that in order to show that he has such claim he must trace by documents a derivative chain of title from one of those sources. In no other way can the peculiar wording of this statute be given meaning; in other words, it is the purpose of that statute to cure titles which are imperfect, because some deed in the chain of title is imperfect.

In any view of the question, however, it is required that the claimants under that statute shall have had *possession* for ten years, and the suit limited in the statute is "against person or persons so as aforesaid *in possession*."

A comparison of the findings of fact with the decree of the court will show that that court ignored the requirements of possession.

The term *possession* must be construed with reference to its effect and the well-known rules of construction.

It cannot mean *constructive possession*, or else color of title would be superior to real title.

It cannot mean mixed possession with the owner, or again colorable title would be superior to a perfect title.

It cannot mean that an intervener without actual possession of any part of his claim, has a superior title to the plaintiff and her co-tenants who have perfect title to the grant and have always been in possession, or again mere colorable title would be superior to the genuine title.

It cannot mean an intervener claiming a narrow strip a few yards wide and seventeen miles long within said grant and in actual possession of not to exceed 1-50th part of said strip could have constructive possession to the bounds of his deed as against the plaintiff and her co-tenants who have perfect legal title to the whole grant and in actual possession of a part, or still again colorable title would be superior to perfect legal title. In other words, the term possession must mean adverse possession under the well-known rules defining that term. Otherwise the owner of the legal title in the actual possession would be compelled to bring suit within ten years against one who has



a deed but no title or actual possession of the land in dispute. In other words, a party in the enjoyment of his full rights of property must bring suit against their threatened invasion.

It is unnecessary to argue this question at length, for the reason that it has been answered not only by logic more persuasive than I could use, but because it has been answered authoritatively.

In the case of *Gentile v. Kennedy* above cited, a case in which the facts were very much like the facts as to the most favored of the interveners, this court, in an opinion by Mr. Justice Bantz, had the following to say:

“The foregoing recitals from the testimony sufficiently show that appellants’ contention is not well founded, as they not only do not show actual possession of the land in dispute by Crossan, but do show an actual possession by Gentile. The removal of the fence by the unknown trespasser, after Crossan had himself openly limited the extent of his actual possession, did not operate to enlarge the area of that possession. We do not think his claim of possession, coupled with occasional acts, such as repairing fences, procuring a survey of the land, the grazing of cattle and the payment of taxes, were in their nature so definite, exclusive and notorious as to amount to an ouster of Gentile, who held, at least, the constructive possession arising from his deed and the actual possession of the ad-



joining lands also embraced in his deed. The law does not require so absurd a thing as that a person must occupy every inch of his land to maintain his possession of it. The rule is that the possession of one who enters upon land under a deed is construed to be co-extensive with the tract described in his deed. 3 Washb. Real Prop. 138. And where two persons, as in the case at bar, are in the actual possession of different parts of a tract, each holding under adverse deeds, covering also land in dispute between them, but neither of them is in the actual possession of the land in dispute, then the law adjudges the seisin of all of the land not in the actual occupancy of the adverse party to be in him who has the better title. *Clark v. Courtney*, 5 Pet. 354. Both cannot be seised, and the seisin consequently follows the title. 3 Washb. Real Prop., 138. It is 'a principle of universal application that the law never raises a constructive possession against the real owner of land;' and 'if an entry be wrongful, though it be under a deed, a possession thereby gained will only extend so far as the tenant shall actually occupy the premises.' *Id.*, 164. 'If the true owner be at the same time in actual possession of part of the land, claiming title to the whole, the constructive possession is in him of all the land not in the actual possession of the intruder.' (*Hunnicutt v. Peyton*, 102 U. S. 333); and that constructive possession continues until there has been an ouster by actual adverse possession (*Ewing v. Burnet*, 11 Pet. 41).

Gentile stands in that position. He has the better title to the land in dispute, and his deed covers that land, and also the adjoining land, of which he has the conceded possession. The constructive possession of the land in question by Gentile since 1880 being shown, that possession must be presumed to continue until its loss by ouster has been proved. 3. Washb. Real Prop. 156. Nothing which appellants have done amounts to such ouster, rendering it at all necessary for him to bring ejectment. If a trespasser, however loud and persistent his claim of ownership, can work an ouster by irregular, occasional, or equivocal acts, though under color of a deed, the statute of limitations would be put in motion against the true owner, it may be without adequate warning of the peril to his title, and he would lose his property or be put to the expense of an action in ejectment. Therefore the law wisely holds that an ouster disseisin must be manifested unequivocally, by some open, visible, continued and exclusive exercise of ownership done on the land adverse to him who has constructive possession; and until such an ouster is shown, constructive possession is not lost, and an action in ejectment is not necessary. While there is great difficulty in laying down precise rules by which the question of adverse possession is to be determined in all cases, certain general rules are well established. 'In the first place, inasmuch as the title of the true owner may, by the statute (of limitations), be often divested by the wrongful act of another, the law

is stringent in requiring clear proof of the requisite facts.' There must be—First, an actual occupancy, clear, definite, positive, and notorious; second, it must be continued, adverse and exclusive; and, third, it must be with an intention to claim title to the lands occupied. 3 Washb. Real Prop. 146.”

*Gentile v. Kennedy*, 8 N. M., p. 347;  
352; 45 Pac. 880.

In the recent case of *Jenkins v. Maxwell Land Grant Company* above cited, this court, in an opinion by Cooley, Justice, had the following to say:

“The plaintiff laid great stress upon the contention that during the entire period of his occupancy his cattle ranged over this tract, but the court found that during the same period cattle belonging to the defendant company and to an organization known as the ‘Sugraite Cattle Outfit,’ as well as to other persons, also grazed on this range. On this point the Supreme Court of the United States has said (*Bergere v. U. S.*, 168 U. S. 66, 79, 18 Sup. Ct. 4, 9; 42 L. Ed. 383): ‘In regard to proof of the fact of pasturing cattle as evidence of an adverse possession upon which to base a claim of title, we have held that such fact is of very slight weight when applied to cases arising under alleged grants of land of the nature of the one under consideration. In the case of *Whitney v. United States*, already above cited, 167 U. S. 529, 546 (17 Sup. Ct., 857, 863 (42 L. Ed. 263) this

court said, speaking through Mr. Justice Brown as follows: 'The claimant also relies upon a long continued adverse possession of this land, maintained for nearly 170 years from the date of the grant, and nearly 80 years from the date of the testimonio issued by the alcalde mayor, De Baca. Had it been shown that this possession was complete, adverse and undisputed during the whole life of this grant, such possession would probably be regarded as complete evidence of title. Nor are we disposed to deny the fact that the Luceros and their descendants pastured stock upon these lands is evidence of such possession, but in order to make it of any particular weight it should be shown to have been exclusive, and that no other person pastured or had the same right to pasture upon these lands. The proceedings in the case first above mentioned, of the intrusion of the Romeroes, indicate the lands to have been held in common, and to have been subject to pasture by the Indians and other residents of the neighborhood. Under such circumstances, it should be made to appear that the rights of Lucero and his descendants were exclusive in this particular. In addition to this, however, it is a fact so notorious that we may take judicial notice of it that mere pasturage upon these western lands is very slight evidence of possession. The court below was of the opinion that 'from a practical standpoint the grazing of stock in this country has no value as evidence of practical location.' In view of the fact that all or nearly all of the testimony re-

specting possession is given by witnesses who are descended from Lucero, or connected with his family, or are interested in the litigation, and the possession relied upon is not shown to have been exclusive or inconsistent with the use of this vast tract as a pasturage common to all the dwellers in that neighborhood, we think the court did not err in refusing to give it weight as evidence of title.' These remarks apply with great force to this case, so far as the evidence herein goes to show actual possession by reason of the pasturing of stock, which is really all the evidence of possession the case affords. It is entirely lacking in evidence of an exclusive possession under a claim of right, and the testimony is consistent with a mere occupancy of but a small portion of the land by Baca and his servants for purposes of pasturage and without claim for further or exclusive right or title."

The court then quotes from *Ward v. Cochran* above cited, showing numerous authorities as to the character of possession necessary, and continues as follows:

"We therefore hold in accordance with these and other authorities, too numerous to cite, that to constitute adverse possession the occupancy of one so claiming must be (1) actual; (2) visible; (3) exclusive; (4) hostile; and (5) continuous. If any one of these elements is lacking, no title by adverse possession can



ripen. At least three were lacking in the case at bar.

"The possession of all but a relatively insignificant part of this large area was constructive, and not actual, and such constructive possession was ineffectual against the true owner. 'It is this instruction of which the defendants complain. But we think it was correct. It was in accordance with the doctrine asserted in *Clark's Lessee v. Courtney*, 5 Pet. 319 (8 L. Ed. 140), and generally recognized. It is true that when a person enters upon unoccupied land, under a deed or title, and holds adversely, his possession is construed to be co-extensive with his deed or title, and the true owner will be deemed to be disseised to the extent of the boundaries described in that title. Still his possession beyond the limits of his actual occupancy is only constructive. If the true owner be at the same time in actual possession of part of the land, claiming title to the whole, he has the constructive possession of all the land not in the actual possession of the intruder, and this, though the owner's actual possession is not within the limits of the defective title. The reason is plain. Both parties cannot be seised at the same time of the same land under different title. The law therefore adjudges the seisin of all that is not in the actual occupancy of the adverse party to him who has the better title.' These distinctions are clearly shown in the cases. One who enters upon the land of another, though under color of title, gives no notice to that other of any claim, except

to the extent of his actual occupancy. The true owner may not know the extent of the defective title asserted against him, and if while he is in actual possession of part of the land, claiming title to the whole, mere constructive possession of another, of which he has no notice, can oust him from that part of which he is not in actual possession, a good title is no better than one which is a mere pretense. Such we think is not the law. When the owner of the Basquez title entered upon the tract, took actual possession of a part by his tenant and retained it, claiming the whole, the law gave to that owner the constructive possession of all that was not in the actual adverse possession or occupancy of another. *Hunnicutt v. Peyton*, 102 U. S. 368 (26 L. Ed. 113.)”

*Jenkins v. Maxwell Land Grant Co.*,  
107 Pac. 740, 741, 742.

This question came before the Supreme Court of the United States in the year 1819, and in considering it, Justice Story, speaking for the court, says:

“This brings us to the consideration of the period when the evidence first establishes any entry or possession in John Coburn. It appears by the evidence that in the winter and spring of 1791 Coburn entered into and fenced a field within the boundary of Craig’s patent, claiming to hold the same under the title of Netherland, as a part of the land included in

his survey of a tract of 400 acres. If Coburn at this time had been the legal owner of Netherland's survey, his actual occupation of a part would not have given him a constructive seisin of the residue of the tract included in that survey, if at the time of his entry and occupation that residue was in the adverse seisin of another person having an older and better title. *For where two persons are in possession of land at the same time under different titles the law adjudges him to have the seisin of the estate who has the better title. Both cannot be seised, and therefore the seisin follows the title.* Now, it is clear that the title of Craig, and of course of his grantee Gratz, was older and better than Netherland's; and the possession of Barr, under that title being the possession of Gratz, the legal seisin of the land, which was not sold to Barr, was by construction of law in Gratz; and the disseisin of Coburn under the junior title did not extend beyond the limits of his actual occupancy."

*Barr v. Gratz's heirs, 4 Wheaton, star page 223.*

The same question was again decided by the same court in the year 1879, in which Mr. Justice Field, speaking for the court, says:

As to the plea of prescription, we agree with the court below that under the circumstances the mixed possession of the parties, their continued contest and litigation from 1854 to the present time, and

the absence of actual possession by either of a large portion of the property, no prescription can be claimed and that the case must be determined on the documentary evidence of title."

*Brownsville v. Cavazos*, 100 U. S. 138-145.

This question was again before the court in the year 1880, in which Mr. Justice Strong, speaking for the court, says:

"The seventh assignment relates to the charge given to the jury respecting the Statute of Limitations. To understand this it is necessary to refer to some of the facts that appeared in evidence. It appeared that in 1835 John Marlin, as a colonist, obtained a complete grant from the Mexican government of one league, part of which interfered with the Basquez four leagues tract. It appeared also that the defendants, Watson and his children, Bartlett and his wife, and W. H. Jones, having shown title in themselves to the several tracts they claimed, by regular transfer from the sovereignty of the soil, gave evidence tending to show that their ancestor, Churchill Jones, in 1855 or 1856, took actual possession of that part of the Marlin League which interfered with the Basquez Grant, built a mill and other improvements thereon, and that the possession had been kept up exclusively by said defendants and those under whom they hold down to the trial.

This possession they claimed to be a defense. It appeared, however, that in 1858 the plaintiff's ancestor entered on the Basquez Grant, but not on the interference, and made a lease to James Marlin, permitting him to occupy three hundred and twenty acres. Marlin has ever since resided there, holding as tenant under the plaintiffs or their ancestor.

"The charge of the court was as follows:

"The facts, as I understand the defendants to claim them, are that in 1855, under the Marlin title, and in 1856 or 1857, under the Sanchez title, they took actual possession of their lands lying within the conflict.

"From that date the statute of limitations began to run in their favor for the lands embraced within their title as against the Basquez title. If three years elapsed before they were ousted by a superior possession, then their occupancy for three years makes a complete bar to any recovery by the plaintiffs.

"But the plaintiffs claim that in May, 1857, before the defendants had been in possession for the period of three years of any of the lands within the conflict, their possession was interrupted by the entry upon the Basquez Grant of James Marlin as the agent for Mrs. Eberly.

"If you find this fact to be as the plaintiffs claim, that James Marlin entered upon the Basquez Grant in 1857 as the agent for Mrs. Eberly, claiming title to the whole in her name, we instruct you that for that time the possession of the defendants—they holding under a junior



title—was restricted to the lands actually occupied by them and could not be extended by construction to the bounds called for by their paper title.

“From January 28, 1861, to the 30th of March, 1870, the statute of limitations in this state was suspended. No extension, therefore, of the actual possession of defendants between these dates would avail them unless held for three years after the statute had again commenced running, and before the commencement of this suit.”

“It is this instruction of which the defendants complain. But we think it was correct. It was in accordance with the doctrine asserted in *Clarke's Lessee v. Courtney* (5 Pet. 319), and generally recognized. It is true that when a person enters upon unoccupied land under a deed or title, and holds adversely, his possession is construed to be co-extensive with his deed or title, and the true owner will be deemed to be disseised to the extent of the boundaries described in that title. Still his possession beyond the limits of his actual occupancy is only constructive. *If the true owner be at the same time in actual possession of part of the land, claiming title to the whole, he has the constructive possession of all the land not in the actual possession of the intruder, and this though the owner's actual possession is not within the limits of the defective title. The reason is plain. Both parties cannot be seised at the same time of the same land under different titles. The law therefore adjudges the seisin of all that is not in the actual oc-*

*cupancy of the adverse party to him who has the better title.'* These distinctions are clearly shown in the cases. *One who enters upon the land of another, though under color of title, gives no notice to that other of any claim except to the extent of his actual occupancy.* The true owner may not know the extent of the defective title asserted against him, and if while he is in actual possession of part of the land, claiming title to the whole, mere constructive possession of another of which he has no notice, can oust him from that part of which he is not in actual possession, a good title is no better than one which is mere pretense. Such we think is not the law. When the owner of the Basquez title entered upon the tract, took actual possession of a part by his tenant, and retained it, claiming the whole, the law gave to that owner the constructive possession of all that was not in the actual adverse possession or occupancy of another."

*Hunnicut v. Peyton*, 102 U. S. 333, 367 to 369.

This question was again before the court in 1889, and Mr. Chief Justice Fuller, speaking for the court, says:

"No title therefore was transmitted by these deeds; but a tax deed, though void upon its face, is sufficient color of title in Nebraska to support an adverse possession to the property therein described. *Gatling v. Lane*, 17 Nebraska 77; while a

tax certificate is not. *McKeighan v. Hopkin*, 14 Nebraska 361, 364. The possession, however, which bars a recovery **must be continuous, uninterrupted, open, notorious, actual, exclusive and adverse.** *Armstrong v. Morrill*, 14 Wall. 120, 145. From the findings it appears that Little was holding in January, 1875, which was within ten years prior to the commencement of this suit, under a tax certificate; that up to the year 1876 the possession of the land in dispute was 'mixed' but it was 'open, vacant and unoccupied except by the city pest house, and was used as a common;' that some portions of the whole tract were in possession of squatters; some portions in possession of parties holding under Mrs. Irwin and a part in the possession of the grantee in the tax deeds or under him; and the jury find the possession of the premises delivered to the defendant and held by him to have been only a mixed possession. *Where the rightful owner is in the actual occupancy of a part of his tract, he is in the constructive and legal possession and seisin of the whole, unless he is disseised by actual occupation and dispossession, and where the possession is mixed, the legal seisin is according to the legal title, so that in the case at bar there could be no constructive possession on the part of the defendant or his grantors, even if that might exist if he has had actual possession of a part, and no one had been in possession of the remainder.* *Hunnicutt v. Peyton*, 102 U. S. 333, 368; *Barr v. Gratz*, 4 Wheat. 213, 223. Nothing is clearer upon the face of this record than

that the jury refused to find the possession relied on by defendant to have been actual, undisputed, exclusive, open, notorious and adverse, but found on the contrary that the possession was mixed. The judgment cannot be reversed on the ground of error in this regard."

*Deputron v. Young*, 134 U. S. 241-254.

This question was again before that court in the year 1893, in which Mr Justice Shiras, speaking for the court, says:

"The action of the court below in rendering judgment on the special verdict in favor of the defendant forms the subject of the first assignment of error. The plaintiff's contention is that the special verdict did not warrant a judgment in favor of the defendant because it did not find that the possession on which the defendant relied was actual and exclusive.

"No state statute has been referred to as regulating or defining title by adverse possession, and indeed it is stated in the brief of defendant in error that there is no such statute; but there is a statutory provision that an action for the recovery of the title or possession of lands, tenements or hereditaments can only be brought within ten years after the cause of such action shall have accrued.

"Our investigation therefore into the sufficiency of the special verdict must be controlled by the principles established in this branch of the law by the decisions



of the courts, particularly those of the Supreme Court of the State of Nebraska and of this court.

"In *French v. Pearce*, 8 Connecticut 439, 440, it was said that 'it is the fact of exclusive occupancy, using and enjoying the land as his own, in hostility to the true owner, for the full statutory period, which enables the occupant to acquire an absolute right to the land.'

"In *Sparrow v. Hovey*, 44 Michigan 63, a refusal of the court to charge that, when the title is claimed by an adverse possession, it should appear that the possession had been 'actual, continued, visible, notorious, distinct and hostile,' but merely charging the jury that the possession 'must be actual, continued and visible' was held erroneous. In Pennsylvania it has been repeatedly held that to give a title under the statute of limitations the possession must be 'actual, visible, exclusive, notorious and uninterrupted.' *Johnston v. Irwin*, 3 S. & R. 291; *Mercer v. Watson*, 1 Watts, 330, 338; *Overfield v. Christy*, 7 S. & R. 173.

"In *Jackson v. Berner*, 48 Illinois, 203, it was held that an adverse possession sufficient to defeat the legal title, where there is no paper title, must be hostile in its inception, and is not to be made out by inference, but by the clear and positive proof; and further, that the possession must be such as to show clearly that the party claims the land as his own, openly and exclusively.

"In *Foulk v. Bond*, 12 Vroom (41 N. J. Law) 527, 545, it was said: 'The principles on which the doctrine of title by ad-



verse possession rests are well settled. The possession must be actual and exclusive, adverse and hostile, visible and notorious, continued and uninterrupted.'

"It was held in *Cook v. Babcock*, 11 Cush. 206, 209, that 'when a party claims by a disseisin ripened into a good title by the lapse of time as against the legal owner, he must show an actual, open, exclusive and adverse possession of the land. All these elements are essential to be proved, and failure to establish any one of them is fatal to the validity of the claim.'

"In *Armstrong v. Morrill*, 14 Wall. 120, 145, this court, speaking through Mr. Justice Clifford, said: 'It is well settled law that the possession, in order that it may bar the recovery, must be continuous and uninterrupted as well as open, notorious, actual, exclusive and adverse. Such a possession, it is conceded, if continued without interruption for the whole period which is prescribed by the statute for the enforcement of the right of entry, is evidence of a fee, and bars the right of recovery. Independently of positive statute law, such a possession affords a presumption that all the claimants to the land acquiesce in the claim so evidenced.' *Hogan v. Kurtz*, 94 U. S. 773, is to the same effect.

"The authorities in Nebraska are substantially to the same effect on questions of title by adverse possession.

"A leading case of *Horbach v. Miller*, 4 Nebraska, 31, 46, 48, in which it was said that the 'elements of all title are possession, the right of possession and

the right of property; hence, if the adverse occupant has maintained an exclusive adverse possession for the full extent of the statutory limit, the statute then vests him with the right of property, which carries with it the right of possession, and therefore the title becomes in him.

"The submission of the case to the jury correctly was that if they believed, from the evidence, that the plaintiff in error, for ten years next before the commencement of the action, was in the actual, continued and notorious possession of the land in controversy, claiming the same as his own against all persons, they must find for the plaintiff in error. In *Gatling v. Lane*, 17 Nebraska, 77, 82, the language used was: 'A person who enters upon the land of another with the intention of occupying the same as his own, and carries that intention into effect by open, notorious, exclusive, adverse possession for ten years, thereby disseises the owner.' In *Parker v. Starr*, 21 Nebraska, 680, 683, a recovery was sustained where the testimony clearly showed that 'the defendant and those under whom he claims have been in the open, notorious and exclusive possession for ten years next before the suit was brought.' In *Ballard v. Hansen*, 33 Nebraska, 861, 864, the following instructions which had been given in the trial court were approved by the Supreme Court: 'The jury are instructed that adverse possession, as relied upon by the plaintiffs in this action, is the open, actual, exclusive, notorious and hostile occupancy of the land, and

claim of right, with the intention to hold it as against the true owner and all other parties; such occupancy, if continuous for ten years, ripens into a perfect title, after which it is immaterial whether the possession be continued or not.' 'If you find and believe, from a preponderance of the testimony in this case, that the plaintiff was in the actual, open, notorious, exclusive, continuous possession of any of the lots in controversy for ten years, claiming to own and hold them as against all others, as to such lots he is entitled to recover.'

*"Tested by these definitions, it is obvious that if title relied on in this case by the defendant below was fully described and characterized by the special verdict, it was defective in two very essential particulars, in that it was not found to have been actual and exclusive. A possession not actual but constructive; not exclusive, but in participation with the owner or others, falls very far short of that kind of adverse possession which deprives the true owner of his title."*

*Ward v. Cochran*, 150 U. S. 597, 605 608.

We have confined our citations to the New Mexico decisions and those of the Supreme Court of the United States; but the rule is practically the same everywhere.

I have given more time to the discussion of this question than would seem to be necessary under ordinary circumstances, because the rule claimed

by us is not only sustained by every reason, but is supported by unanimous authority; but the results of the decision of the district court would be so disastrous if generally followed that the question is one of grave concern to every landowner in New Mexico.

Even if the decision should be confined to lands within the boundaries of land grants as contended for by interveners and intimated by the district court, still it would affect a very large portion of the State and be even more dangerous than a general rule, because discriminatory and unjust as against a particular class of landowners.

If the construction of the district court is correct land-grant titles would be a delusion and a snare. It would furnish a unique method of acquiring property without purchase, without title, without the necessity of adverse possession as against the true owner. Instead of being a statute of repose, it would cause continual litigation and controversy. No man could know when his title would be assailed by the insidious and secret deed purporting to convey a fee. Even he who had succeeded in defeating the true owner would have no security, but he in turn would be subject to being turned out by still another with his secret deed purporting to convey a fee. All that we have considered as sacred in the protection of property rights would disappear.

Everyone familiar with the condition in New Mexico knows that in these large, unenclosed

grants, such a thing as adverse possession, except as to small farming tracts, does not exist anywhere. It is entirely foreign to the ideas of the native people. The one thing that they have insisted upon and recognized above all others in regard to their real estate is the fact that all of their lands outside of those actually used for farming, or enclosed, are pasture or common lands, and open to the use of all jointly.

There is not a habit or trait of character better known, or of more universal existence, than this method of owning or using the land grants in New Mexico. Just such conditions exist in practically every grant. Small amounts of farming land capable of irrigation are parceled out to actual settlers, who may or may not have an interest in the grant, for the purpose of cultivation of crops. All lands not needed for cultivation are held and used in common for the purposes of pasturing their stock.

The idea of these land grants being owned in strips sixteen to seventeen miles in length, and in some cases but a few yards in width, is an absurdity upon its face. Such claims never were regarded by the Mexican people as anything more than a right to graze on unoccupied lands.



## III.

THE COURT ERRED IN REFUSING TO AWARD COSTS TO APPELLANTS AS PROVIDED BY SECTION 3148 OF THE COMPILED LAWS OF NEW MEXICO AND IN AWARDING COSTS ON THE SO-CALLED PER CAPITA BASIS.

This proposition is involved in the fourth assignment of error.

The section above referred to is as follows:

“Section 3148. For all civil actions or proceedings of any kind the party prevailing shall recover his costs against the other party except in those cases in which a different provision is made by law.”

In the case of *King v. Tabor*, 15 N. M. 494, 110 Pac. 602, the Supreme Court of New Mexico held that the section in question applies to costs on appeal, and in passing upon the question of who should be considered the prevailing party, quotes with approval the following:

“In the absence of some special statutory provision of the apportionment of the costs where each party succeeds on one or more of the causes of action, claims or issues, it would seem that the plaintiff having obtained a judgment for a part of the relief prayed, would as the prevailing party be entitled to such costs.”

And also the following:

"The prevailing party shall have his costs, it makes no difference how many questions he has raised, if he succeeds in any one of them he shall have his costs and the same shall be taxed against the appeal."

And also:

"According to the weight of authority where on appeal or error appellee or defendant in error remits a portion of the amount recovered, he will be required to pay the costs of the appeal or writ of error."

The above case was one in which the judgment was affirmed upon the appellee remitting the sum of \$144.26 and the costs were taxed in favor of the appellant.

The same doctrine was held in the case of Gallup Electric Light Company v. Pacific Improvement Company. The statement as contained in the syllabus prepared by the court is as follows:

"Under the compiled Laws 1897, Section 3148, an appealing party who secures a reversal and new trial is entitled to all costs occasioned by the erroneous judgment, including those accruing both in the district and in the supreme court, but not to the costs in the district court up to the time of the rendition of the erroneous judgment.

That was a case in which a new trial was grant-

ed. In this case an appeal as against all interveners was necessary to correct a joint judgment in their favor, and the appellants prevailed as to about one-fifth of the land involved. Our contention is that the section of the statute is plain in itself, and its meaning well settled by adjudicated cases of the Supreme Court of New Mexico.

That portion of the judgment complained of, relating to costs, is as follows:

“It is further considered, adjudged and decreed by the court that the costs of this appeal, amounting to the sum of \$331.95, be and the same hereby are assessed per capita to the 458 appellants and the two unsuccessful appellees, for which let execution issue.” (Record, p. 148.)

In other words, the right to recover costs is based upon the number of appellants rather than upon the result of the appeal, and the successful appellants were required to pay under that judgment the sum of \$330.51 as against \$1.44 to be paid by the unsuccessful appellees. We submit that a judgment upon that basis is not supported by either law or reason.

## IV.

SECTION 2937 COMPILED LAWS OF NEW MEXICO AS CONSTRUED BY THE SUPREME COURT OF NEW MEXICO, VIOLATES SECTION 10 OF ARTICLE V, WHICH FORBIDS THE STATE TO PASS ANY LAW IMPAIRING THE OBLIGATIONS OF CONTRACTS, THE FIFTH AMENDMENT TO THE CONSTITUTION, WHICH PROVIDES THAT NO PERSON SHALL BE DEPRIVED OF LIFE, LIBERTY OR PROPERTY WITHOUT DUE PROCESS OF LAW, AND THE PROVISION OF SECTION 1 OF THE FOURTEENTH AMENDMENT, WHICH PROVIDES THAT NO STATE SHALL DEPRIVE ANY PERSON OF LIFE, LIBERTY OR PROPERTY WITHOUT DUE PROCESS OF LAW, NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS.

This question was raised in the Supreme Court of New Mexico on a motion for re-hearing, and as under the practice there the motion consists of argument as well as the usual requirements of a motion, we copy the same here as a part of our argument, as follows:

The appellants in this case desire to call to the attention of this court some of the dangers arising from the decision heretofore rendered, and to the fact that it is in violation of provisions of the Constitution of the United States not hereto-

fore called to the attention of the court, and also that the question involved was of adverse possession and not the construction by statute which has been given by the court.

A most unfortunate state of affairs has been created relative to the titles of real estate in this commonwealth, in that by this decision the court has applied one rule for property outside of land grants and another different rule for property rights within land grants.

It is hardly necessary to call to the attention of the court that more than five million acres of the most valuable land within the limits of New Mexico consist of land grants granted by the Kingdom of Spain and later by the Republic of Mexico, and confirmed by the Congress of the United States or by the Court of Private Land Claims.

It is most unfortunate for this commonwealth that an entirely different rule for determining legal titles should be applied to this class of valuable property, and I wish to call to the attention of the court that even as to those who have gained title under this decision, their title is uncertain, and the land cannot have any great value as long as this condition remains, for the reason that the latest man with the poorest title would, under this decision, have the superior title; that is to say, possession under very small tracts with a deed not recorded covering a much larger tract might gain title to lands occupied and improved



by another who is enjoying all the rights of ownership under a perfect title.

There can be no question about the attitude of the court in this decision. On page 29, the opinion states:

“The legislature, therefore, enacted statute, in question (Sec. 2937) and intended to create, and did create, a right and title as to real property acquired in a land grant and provided another and different rule of limitation as to real property which might be adversely acquired under Section 2938.”

If this is true, the section in question is in violation of a provision of the 14th Amendment to the Constitution of the United States, which provides that no state shall deny to any person within its jurisdiction the equal protection of the law.

The opinion proceeds as follows:

“It should be understood that, so far as this case is concerned, the construction placed upon Section 2937, *supra*, is made applicable to Spanish or Mexican land grants only, as the grant lands herein described are within such a grant. The grants of lands by the United States, which might be of a very different nature, are not deemed pertinent to the decision of this case.”

On page 36 the opinion states:

“It is further contended, that in order

to acquire title by adverse possession all of the requirements above mentioned are absolutely essential, and the courts of this Territory have steadily adhered to that rule.

"That in order to constitute adverse possession it must be actual, open, visible, notorious, continuous, exclusive, hos-

"This is a correct statement of the law as to the acquirement of title by adverse possession under ordinary limitation statutes such as are commonly enacted, where title inures simply by reason of a limitation and not by virtue of a fee simple title provided as an affirmative right, as in Section 2937."

From the opinion on page 33, it appears that it is not even necessary under section 2937 of the Compiled Laws that the plaintiff should have recorded his deed, and therefore, one might have the legal title, be in the actual possession of a large tract of land, cultivating and using it, and enjoying all the rights which his title gives him, and yet his neighbor, in possession of a small tract adjoining him might take a deed including both tracts, and without having it recorded, and without any notice whatever to the owner of the larger tract, acquire title to the whole under the terms of this decision, which would clearly violate the provision of the 5th Amendment to the Constitution of the United States as well as the 14th Amendment, forbidding the taking of property without due process of law. Because, in

such case, a statute beforehand determines in an arbitrary manner the rights of property and instead of being a limitation it is a statutory transfer from the true owner to a mere claimant under color of title.

On page 43 the opinion states:

“If the interveners relied upon *adverse possession* under Sec. 2938, there can be little doubt but that the circumstances under which these mesa lands were held *would constitute constructive possession such as would, by legal presumption, adhere to the true title.* If, however, the conclusions of the court in the construction of Sec. 2937 are correct, as we regard them, *this is not a proceeding in adverse possession* under Sec. 2938, so far as the interveners rights are involved, but is a proceeding under Sec. 2937 *in which interveners rely upon a fee simple title by deeds under the terms of the statute.*”

It is clear therefore that the decision in favor of the interveners in this case is based squarely upon the proposition that adverse possession such as is usually required under statutes of limitation affecting real estate, is not required but that title may be acquired by one claiming under a deed or devise purporting to convey an estate in fee simple, although such deed is not recorded, and although it covers title to a larger tract in which the owners are in actual possession of a portion and constructive possession under a per-

fect title as to the rest.

In the opinion of the court as well as in the decree of the district court it appears that the grant in question was made by the King of Spain to Francisco Montes Vigil and by him sold to Captain Juan Gonzales, and that said grant was confirmed by the Court of Private Land Claims to the heirs, assigns and legal representatives of the said Francisco Montes Vigil and Captain Juan Gonzales. This grant which was confirmed by the Court of Private Land Claims was a contract, and entitled to the protection of the Constitution of the United States which forbids the impairing of the obligations of a contract. To allow a title that was given to Francisco Montes Vigil and by him conveyed to Captain Juan Gonzales to be defeated by deeds which had no lawful beginning and a possession which was constructive but not actual as to the mesa lands, as against the real title as declared by the Court of Private Land Claims and by the decree of the court below and the possession which was constructive as to that perfect title, would be to impair the obligations of the contract, as evidenced by the Grant from the King of Spain.

The authorities, we think, are clear that the only justification for a statute of limitation affecting the title to real estate is that it is intended as a statute of repose, and to be given in favor of one in actual possession of property, exercising all the rights usually required to constitute ad-

verse possession, and cannot lawfully be given, even though that was the intention of the legislature, against one who is in possession, either actual or constructive under a legal title and enjoying all the rights of his legal ownership, and if section 2937 means what the opinion of this court says it means, it is clearly violative of fundamental rights, in that it takes the property of the true owner and gives it to the colorable owner who has no superior possession and has an inferior title.

We submit that no consideration of public policy or right or justice can sustain such a construction, and that it is clearly in violation of the provisions of the Constitution of the United States.

We call attention to the fact that the interveners at the time they filed their answer recognized the necessity of showing that they had adverse possession to the strips of land in question and set out in their answer that it was open, notorious, adverse, continuous, etc., but upon being unable to prove that set of facts sought a different construction of the statute. We also call attention of the court to the fact that although section 2937 has been in existence for more than 50 years prior to this intervention, and although numerous cases affecting title and possession, usually within land grants had gone to this court and to the Supreme Court of the United States that never prior to this time had any such contention been made for



the construction of section 2937, but the bench and bar had universally regarded the statutes involved in this case as requiring the usual elements of adverse possession.

Owing to the fact that there is such a large portion of this Territory consisting of land grants, which this decision affects intimately, and as we think, disastrously, and inasmuch as it fixes one rule for the protection of titles outside of land grants and an entirely different rule within land grants, in fact that it gives protection to titles outside of land grants by requiring the usual elements of adverse possession, and as to titles within land grants practically forfeits them without any redress to the legal owner, but takes them upon a statutory construction which would deny due process of law and the equal protection of the laws that the court should re-hear this case, or at least, give these questions the careful consideration which their importance demand, and decide upon this motion, either that the statute in question, Sec. 2937 of the Compiled Laws of New Mexico, as construed by the court, either does or does not violate the fundamental rights of owners of lands within land grants including the appellants in this case, and takes their property without due process of law, and denies to them the equal protection of the law.

The appellants, therefore, move the court for a re-hearing upon the following grounds, not presented to the court upon the original hearing

through oversight, and not considered by the court, to-wit:

1. Because Section 2937 as construed by the court in this case takes the property of the appellants without due process of law.

2. Because said Section 2937 as construed by the court in this case denies to appellants, who are owners of land within land grants, the equal protection of the law.

3. Because said Section 2937 as construed by the court in this case would impair the obligation of the contract by which the original grantees secured said land and through which the appellants have established title by the Court of Private Land Claims and the decree of the district court.

4. Because Section 2937 as construed in this cause is violative of fundamental rights.

The court after consideration of the questions raised by the motion, adhered to its former opinion (record, 181) except Associate Justice Wright, who dissented and withdrew his concurrence to the former opinion. (Record 182.)

The questions presented by the motion for rehearing raise the point that Section 2937 of the Compiled Laws of New Mexico of 1897 as construed by the court was violative of the following provisions of the Constitution of the United States, namely: Section 10 of Article V., which forbids the state to pass any law impairing the obligation of contracts; the fifth amendment to the constitution, which provides that no person shall

be deprived of life, liberty or property without due process of law, and the provisions of Section 1 of the 14th amendment, which provide that no state shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

While not waiving any of the points raised by the motion for re-hearing, I shall confine my concluding argument to the provision of the fifth amendment, that no person shall be deprived of life, liberty or property without due process of law, and contend that the construction given by the court to the statute in this case does deprive appellants of their property without due process of law.

It was found by the court and conceded that the original title of interveners was invalid; that is, it was not traced to any legal source. It is a familiar principle of law that "That which was originally void cannot by mere lapse of time be made valid;" consequently it must follow that the title of interveners as to the mesa property, being originally void, could not become, and is not now, **valid, and the legislature could not by a mere enactment, make it valid.**

A statute which declares that the property of A should thereafter belong to B is so palpably vicious that all would concede it to be unconstitutional and void, a mere arbitrary transfer by legislative act, a taking of property without due pro-

cess of law.

A statute which declares a deed from A, who does not own the property, to C, to be legal and valid to convey the property of B, would in no way differ from an arbitrary transfer direct from B to C, and therefore would be unconstitutional and void.

For the same reason, a statute which declares that mere lapse of time shall operate as a transfer of title through the medium of a deed which was originally void because the maker had no title, in no way differs from the above examples, and is an arbitrary transfer of title and a taking of property without due process of law, because no system of reasoning can make that valid which was originally void.

The line of demarcation between statutes of limitation and statutes which attempt to adjudicate or transfer property is clear. Statutes of limitation do not attempt to transfer the right, but merely limit the remedy to a certain reasonable time, and a statute of limitation which does not give a reasonable time within which to bring an action is unconstitutional and void.

*Sohn v. Waterson*, 17 Wall. 596.

Any statute which attempts to transfer property from the rightful owner to another otherwise than by limiting the right of action under the well-known principles of statutes of limitation is

everywhere conceded to be legislative usurpation of judicial power, and void.

If the foregoing propositions are true, then it must necessarily follow that, the title of interveners having been originally void, is not now valid or legal, and therefore if they have acquired any rights superior to those of the appellants, it is because they come within the provisions of some valid limitation law; and if they claim under a limitation law, the doctrine of adverse possession must necessarily apply; and if the doctrine of adverse possession applies, constructive possession of unoccupied lands follow the legal title and not the colorable title.

Although section 2937 of the Compiled Laws of 1897 has been in force for almost half a century and there has been a great deal of litigation involving the question of possessory rights within land grants, yet no such claim and no such construction of that statute has ever been given as has been given in this case.

The only case that I find in New Mexico in which its express terms have been considered is the case of *Gildersleeve v. Mining Company*, 6 N. M. 40, and it is assumed in that case that the section in question shall require adverse possession. After quoting the provisions of Section 1880 of the Compiled Laws of 1884, which is the same as 2937, Compiled Laws of 1897, the court says:



“We are of the opinion that the evidence in the cause amply sustains the finding of the master that the bar of the statute had attached before complainant brought his action. The testimony, it is true, is somewhat conflicting as to the nature and extent of defendants’ actual possession; still, there is enough evidence, in our opinion, tending to show that defendants had maintained *an open, adverse and continuous possession under-claim of title in fee for more than ten years* before the bringing of this suit. This we hold is sufficient to bar plaintiff’s right of recovery.”

While perhaps no other case has mentioned section 2937, all of the cases in the Supreme Court of New Mexico and in the Supreme Court of the United States have assumed that our statute of limitation applied equally to lands within and without land grants, and required the usual elements of adverse possession.

It is clear that the power of the legislature is limited in the character of laws which it may enact in regard to limitation of actions affecting real estate. The power never existed to take property without due process of law or to transfer title by legislative act.

All limitation laws must proceed upon the theory that the party by lapse of time and omission on his part has forfeited his right to assert his title in the law.

*Gittings v. Sterns*, 19 Ill. 376.

*Sturges v. Crowninshield*, 4 Wheaton 122-207.

*Pearce v. Patton*, 7 B. Monroe, 162.

*Griffin v. McKenzie*, 7 Ga. 163.

*Colman v. Holmes*, 44 Ala. 124.

In the case of *Sturges v. Crowninshield*, the court held that the New York act which attempted to discharge an insolvent debtor from his contracts made prior to said act was in violation of the United States constitution, because it impaired the obligation of the contract. Chief Justice Marshall, in delivering the opinion of the court, said:

“By way of analogy, the statute of limitations and against usury have been referred to in argument, and it has been supposed that the construction of the constitution which this opinion maintains would apply to them also and must therefore be too extensive to be correct.

“We do not think so. Statutes of limitation relate to remedies which are furnished in the courts. They rather establish that certain circumstances shall amount to evidence that a contract has been performed than dispense with its performance. If in a state where six years may be pleaded in bar to an action of assumpsit a law should pass declaring that contracts already in existence not barred by the statute should be construed to be within it there could be little doubt of its unconstitutionality.”

*Sturges v. Crowninshield*, 4 Wheaton,  
207.

The State of Illinois had an act similar to ours, known as the Act of 1839. Section 1 of that Act provided as follows:

“That hereafter every person in the actual possession of lands or tenements under claim or color of title made in good faith, and who shall for seven successive years after passage of this act continue in such possession, and shall also during said time pay all taxes legally assessed on such lands or tenements, shall be held and adjudged the legal owner of such lands or tenements to the extent and according to the purport of his or her paper title.

While the statute in question was even stronger than section 2937 of the New Mexico Act, and in terms attempted to adjudicate and establish a title under certain circumstances named in the section, the uniform construction of the statute was that it was intended as a law of limitation and not as an adjudication or transfer of title, and that all of the elements of adverse possession were necessary in order to come within its provisions.

*McClellan v. Kellogg*, 17 Ill. 498.

*McConnell v. Street*, 17 Ill. 253.

*Woodward v. Blanchard*, 16 Ill. 424.

*Irving v. Brownell*, 11 Ill. 402.

*Gittings v. Sterns*, 19 Ill. 380.

The Act of 1839 of the State of Illinois contained a second section, which was as follows:

“Hereafter whenever any person having color of title made in good faith to vacant and unoccupied land shall after the passage of this act pay all taxes legally assessed thereon for seven successive years, he or she shall be deemed and adjudged the legal owner of said vacant and unoccupied land to the extent and according to the purport of his or her paper title.”

In the case of *Harding v. Butts*, 18 Ill. 502, the Supreme Court of Illinois held that under said section color of title to and payment of taxes for seven years on vacant and unoccupied land could not operate to vest in the party having the color of title and paying the taxes the title to the land, and that said section if construed to effect such result, would be unconstitutional and void.

In the subsequent case of *Gittings v. Sterns*, 19 Ill. 380, the same court construed the section in question to be valid as a limitation act, and established the proposition that where possible, effect would be given as a limitation law, and that construed as a limitation law the section would be valid; but as an act of the legislature adjudicating or transferring title it was absolute-

ly void as taking property without due process of law.

The distinction is clear, running through all the authorities, that the legislatures can affect the remedy by establishing reasonable limitations, but cannot adjudicate titles or transfer them by legislative act.

The court on page 382 said:

“It cannot directly reach the property or vested rights of the citizen by providing for their forfeiture or transfer to another without trial and judgment in the courts, for to do so would be the exercise of a power which belongs to another branch of the government and is forbidden to the legislative.”

Again, on page 383, speaking of the distinction between legislative adjudication or transfer of title and acts of limitation, the same court said:

“The ground, however, upon which they are held consistent with the paramount rule stated is that they apply to the remedy only, affording reasonable and adequate opportunity for enforcement of the right; in other words, if the law strikes at the right and by its own force or in connection with facts *aliunde*, in themselves immaterial, annihilates it or confers the right upon another, the legislature exercises a judicial power, which it cannot do; but such is not the nature of limitation laws; under them the right remains after the bar of the action



is complete, but without remedy of enforcement."

The distinction is clear as applied to the Alameda case. If the court had treated section 2937 as a limitation law, then the interveners must have established their rights as adverse claimants, under the rules established by this court and by the Supreme Court of New Mexico, and by the very terms of the decision in the Alameda case they would have failed as to the mesa lands, because the possession there being constructive, followed the better title and not the mere colorable title of the interveners.

To state the difference in another way: under a legislative adjudication or transfer of title, the question of possession is immaterial, and the ordinary rules of adverse possession do not apply; but the moment that the statute is construed as a limitation law, then all of the requirements of the law of adverse possession apply.

Again, the court, on page 384, in illustrating the principle that the court would construe an act so as to give it effect as a valid act rather than to declare it unconstitutional, says:

"So will acts of the legislature having elements of limitation and capable of being so applied and administered, although the words are broad enough to and do, literally read, strike at the right itself, be construed to limit and control the remedy, for as such they are valid;

but as weapons destructive of vested rights, they are void, and such force only **will be given the acts** as the legislature could impart to them.

“The theory of limitation laws is, that they affect the remedy—limiting the period within which rights may be asserted or remedies resorted to—affording a time and opportunity of enforcing rights by legal remedies, and leaving the right untouched, but regulating or limiting the use of the remedy for assertion of the right or recovery of the thing to which it relates. And upon no other ground can the second section of the act of 1839 be upheld and enforced, as within the limits of the legislative power.

“The language: ‘Shall be held and adjudged the legal owner of such land to **the extent, and according to the purport,** of his or her paper title’ is contained in the first as well as the second section of the act; and the first section having been uniformly treated by this court as a limitation of the remedy, it would seem to follow that the second section may be so construed and enforced. But, treating the second section according to the literal import of the words, the effect is, that the title of the owner is taken from him and conferred upon another, by force of the acts of paying the taxes for the seven years under color of title, and such construction, we hold, would render this section null and void. *Bowman v. Middleton*, 1 Bay R. 252; *The Proprietors, etc., v. Laboree*, 2 Greenleaf’s R. 275; *Shepard v. Johnson*, 2 Humphrey’s R. 285; *The Governor v. Porter*, 5 *ibid.* 165;

Pearce v. Patton, 7 B. Monroe R. 162; Crenshaw v. The Slate River Company, 6 Randolph R. 245; The Regents, etc., v. Williams, 9 Gill & John. R. 365; Harness v. The Chesapeake, etc., 1 Md. Ch. R. 248; Brown v. Humel, 6 Penn. R. 86; De Chastellux v. Fairchild, 15 Penn. R. 18; Fletcher v. Peck, 6 Cranch R. 87; Doe ex dem. Gaines v. Buford, 1 Dana R. 481; The People v. The Board of Supervisors, etc., 4 Barbour's S. C. R. 64; Embury v. Conner, 3 Comstock, R. 511; Varick v. Smith, 5 Paige's Ch. R. 137; Dash v. Van Kleeck, 7 John. R. 477."

*Gittings v. Sterns*, 19 Ill. 376-384.

In the State of Michigan the Act of 1858 provided that the title to land bid off by the state be made absolute and indefeasible after five years, and that no adverse title can be allowed to be set up against it either by a plaintiff or by a defendant.

In the case of *Groesbeck v. Seeley*, 13 Mich. 342, the Supreme Court of that state held the provision to be unconstitutional and void, and distinctly stated the rule to be that a person who has a *lawful right* and is *actually or constructively in possession* can never be required to take active steps against opposing claimants. The law does not compel any man who is unassailed to pay any **attention to unlawful pretenses** which are not asserted by possession or suit. No one can be cut off by limitation until he has failed to prosecute

the remedy limited, and no one can be compelled to prosecute when he is already in possession of all that he demands. This decision was delivered by Mr. Justice Campbell and concurred in by Mr. Justice Cooley, two of the greatest constitutional lawyers of their time. I quote from the opinion in that case as follows:

“This point is substantially like that which arose in *Quinlon v. Rogers*. In that case a statute cutting off all adverse rights two years after a deed had been recorded, was held invalid, on the ground that it was depriving a party of his rights without due process of law. The legislature had indeed undertaken to provide a sort of remedy, which was not, perhaps, in its terms strictly applicable to such titles as that involved in that case, but which was the only one devised at all. In *Waldby v. Callendar*, 8 Mich. R., 430, this remedy was declared nugatory. Whether, if lawful, it would have been valid to cut off rights in possession, it was not necessary to decide. The law as it stood took away titles, without allowing parties holding the actual dominion under them any opportunity to defend their rights. There is no principle upon which such legislation can be maintained. The only manner in which a party holding a lawful and vested right in property can be prevented from asserting it against one which was not lawful in its inception, is by the operation of limitation laws. These laws do not purport to take away existing rights, al-

though their operation may often have substantially that result. But they are designed to compel parties whose rights are unjustly withheld from them to vindicate their claims within some reasonable time. If a person who has been ousted of his possession or dominion desires to regain it, he knows that he must resort to those means which are furnished by the law, either by the peaceable act of a party himself, or by legal prosecution. A limitation law simply requires him to proceed and enforce these rights within some reasonable time, on pain of being deemed to have abandoned them. Such laws can only operate on those who are not already in the enjoyment and dominion of their rights. A person who has a lawful right, and is actually or constructively in possession, can never be required to take active steps against opposing claims. The law does not compel any man who is unassailed to pay any attention to unlawful pretenses which are not asserted by possession or suit. When such a title is set up, he has a right to defend himself, by jury, if the claim is one of common law cognizance, or otherwise, if of a different nature. But to hold that, under any circumstances, a man can be deprived of a legal title without a hearing, is impossible, without destroying the entire foundations of constitutional protection to property. No one can be cut off by limitation until he has failed to prosecute the remedy limited; and no one can be compelled to prosecute, when he is already in possession of all that he de-



mands.

"This statute does not purport to be a limitation law. It is designed by its express terms to deprive persons of their titles whether in possession or not, by mere lapse of time. If the proceedings to sell for taxes were illegal, no lapse of time can change their character, and they can never therefore become legal. If the tax purchaser obtains possession, and holds it until protected by a limitation law, he then becomes safe, not because his tax title is any more regular, but because the holder of the better title has become incapable of asserting it. As an illegal tax title is a nullity, it cannot of itself divest or affect the true title in any way, and the true owner cannot be lawfully compelled to incur expense or take active measures to get rid of it, unless he sees fit. But if he becomes ousted, whether by a pretended tax title holder or by any adverse claimant, he can only secure the enjoyment of his rights by active measures, and the party in possession may then rely on such possession until it is lawfully assailed, by suit or otherwise, within the period of limitation. In the present case, the party asserting a legal claim against one which he claims to have been illegal, is in possession as a defendant. The other claimant is the actor, and insists that whether his tax title was legal or worthless originally, it has become good, although the defendant has not been previously ousted and guilty of delay in enforcing this title.

"If this tax title can be thus made in-

defeasible against a title in possession, by mere lapse of time, it might as well have been declared so originally. It would in either case be nothing more nor less than depriving one of his property without any legal process, and is simply confiscation by ministerial and not judicial action."

*Groesbeck v. Seeley*, 13 Mich. 342.

See also to the same effect:

*Baker v. Kelly*, 11 Minn. 480.

*Smith v. Sherry*, 54 Wis. 114.

*Gittings v. Sterns*, 19 Ill. 376-384.

*Farrar v. Clarke*, 85 Ind. 149.

*Dingey v. Paxton*, 60 Miss. 1038.

Mr. Cooley in his work on Constitutional Limitations, states the proposition as follows:

"But one who is himself in the legal enjoyment of his property cannot have his rights therein forfeited to another for failure to bring suit against that other within a time specified to test the validity of a claim which the latter asserts but takes no steps to enforce. It has consequently been held that a statute which after a lapse of five years makes a recorded deed purporting to be executed under a statutory power conclusive evidence of a good title could not be valid as a limitation law against the original owner in possession of the land. Limita-

tion laws cannot compel a resort to legal proceedings by one who is already in the complete enjoyment of all he claims."

*Cooley on Constitutional Limitations,*  
p. 449.

In note 3 on the same page, he says:

"This circumstance of possession of want of possession in the person whose right is to be extinguished seems to us of vital importance. How can a man be justly held guilty of laches in not asserting claims to property when he already possesses and enjoys the property? The old maxim is: 'That which was originally void cannot by mere lapse of time be made valid;' and if a void claim by force of an act of limitation can ripen into a conclusive title as against the owner in possession, the policy underlying that species of legislation must be something beyond what has been generally supposed."

It may be that counsel for appellants was in fault in not citing these authorities upon the question of constitutional power in his original brief, but it did not seem to counsel that it was possible to give to section 2937 any other construction than that of a limitation law. The opinion of the court concedes that the statement of appellant's counsel as to the requirements of adverse possession are correct, and that if those requirements were applied to the Alameda case, the interven-

ers must fail as to the mesa lands in question, because under the doctrine of adverse possession, where there is a conflict as to constructive possession, the constructive possession will be held to follow the true title.

Quoting from the opinion of the court referring to appellants' claim as to adverse possession, the court says:

"It is further contended that in order to acquire title by adverse possession all of the requirements above mentioned are absolutely essential, and the courts of this Territory have steadily adhered to that rule, that in order to constitute adverse possession it must be actual, open, visible, notorious, continuous, exclusive, hostile, and under claim of right."

"This is a correct statement of the law as to the acquirement of title by adverse possession under ordinary limitation statutes, such as are commonly enacted, where title inures simply by reason of a limitation *and not by virtue of a fee simple title provided as an affirmative right*, as in section 2937."

*Opinion of Court, page 172.*

Again the court says:

"If the interveners *relied upon adverse possession* under section 2938, there can be little doubt but that the circumstances under which these mesa lands were held *would constitute constructive pos-*

*session such as would by legal presumption adhere to the true title. If, however, the conclusions of the court in the construction of section 2937 are correct, as we regard them, this is not a proceeding in adverse possession under section 2938, so far as the interveners' rights are involved, but is a proceeding under section 2937, in which interveners rely upon a fee simple title by deeds under the terms of the statute."*

"As we have seen, a fee simple title matured under section 2937 diverts the title of the true owner as well as of others, and such being the case the laws as laid down in the case of *Hemecutt v. Peyton*, supra, would seem to be inapplicable to the case now under consideration. It is true there is an adverse possession required to mature title under section 2937, but it is not the same as under section 2938."

*Opinion of Court, pp. 176-177.*

In other words, the court bases its opinion squarely upon the proposition that the character of the deed held by the interveners precluded appellants from raising the questions of adverse possession; that the statute by virtue of said deeds created a title. Such a contention must necessarily be unconstitutional and void, as taking property by legislative act and therefore without due



process of law.

It seems to counsel for appellants that it must be perfectly clear that the legislature never intended to make a colorable title superior to the legal title, and that therefore section 2937 was intended as a limitation law based upon color of title, and the possession mentioned in that section must necessarily be such possession as is required under the rules of adverse possession; that is, that the possession under the colorable title must be superior to the possession under the legal title. Is there any escape from this conclusion? Can it be possible that the bad is superior to the good; that no title is superior to good title; that colorable title is superior to legal title? That must be the position taken to sustain a colorable title against the legal title as to the lands of which neither party had actual possession, but merely constructive possession.

We respectfully submit that the judgment of the district and supreme courts of New Mexico is not justified by the facts as found by the district court; that it declares a colorable title superior to the true title and violates the settled law in regard to adverse possession as established by repeated decisions both of the supreme court of New Mexico and of this court; that the construction of section 2937 of the Compiled Laws of New Mexico is not justified by the language used in that statute, and if that were the meaning of the statute, it is violative of fundamental rights protected by the Con-

stitution of the United States.

We therefore ask that the decisions of both the supreme court and the district court be reversed and the cause remanded with directions to dismiss interveners' petition, and that the appellants be adjudged to recover their costs in this court and in the supreme and district courts in New Mexico.

Respectfully submitted,

ALONZO B. McMILLEN,  
Attorney for Appellants.

Office Supreme Court, U. S.

FILED

JAN 26 1914

JAMES D. MAHER  
CLERK**Brief for Interveners Appellees****IN THE SUPREME COURT OF THE UNITED STATES****OCTOBER TERM 1913****No. 204**

VICENTA MONTOYA AND THE UNKNOWN  
HEIRS OF FRANCISCO MONTES VIGIL,  
DECEASED, ET AL., *Appellants*,

VERSUS

CANDIDO G. GONZALES, AND OTHERS IN-  
TERVENERS, *Appellees*.

Appeal from the Supreme Court of New Mexico.

GEORGE S. KLOCK,  
Attorney for All Interveners.  
Albuquerque, New Mexico.  
NEILL B. FIELD,  
Of Counsel for Interveners,  
Albuquerque, New Mexico.



IN THE SUPREME COURT OF THE UNITED  
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BRIEF FOR INTERVENERS APPELLEES.

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STATEMENT OF THE CASE.

The interveners believe that a summary statement of facts contained in the transcript of record is necessary to properly present the questions before the court for decision. The plaintiff brought this action by filing an unverified complaint in the District Court of Bernalillo County, New Mexico, on the 12th day of June, A. D. 1906. The relief prayed was for the partition of the premises described in the complaint known as the Alameda Land Grant. The premises are alleged to be situ-



ate in the Counties of Bernalillo and Sandoval and are described as follows, to-wit:

"A tract of land known as 'The Alameda Land Grant' bounded on the North by the ruins of an old pueblo, on the South by a small hill which was the boundary of Luis Garcia, on the East the Rio del Norte as it ran in the year 1710 near the eastern foothills, and on the West a prairie and hills, and containing according to the official survey thereof, 89346 acres of land as will more fully appear from the record of said survey in the office of the Surveyor General of New Mexico reference to which is made for a more particular description." (Tr. p. 1, f. 3.)

The plaintiff filed her affidavit for publication of notice of suit on the 15th day of June, 1906. The affidavit is very brief, and alleges:

"That the names, places of residence and whereabouts of the above named defendants 'The unknown heirs of Francisco Montes Vigil, deceased,' 'The unknown heirs of Juan Gonzales, deceased,' and 'All unknown owners of the real estate described in plaintiff's complaint,' are to the said affiant unknown. (Tr. p. 3 and 4, f. 6 and 7.)

Notice of the suit was made by the Clerk of the District Court and which notice contains the title of the action and the same description of the prop-

(3)

erty as set forth in the complaint, and the defendants under the general title were notified that unless an appearance was entered by them on or before the 4th day of August, 1906, judgment by default would be rendered against them. (Tr. p. 4 and 5, f. 8.)

The notice of suit was published in The Albuquerque Weekly Citizen from and including the 23rd day of June, 1906, to and including the 14th day of July, 1906. (Tr. p. 5, f. 9.)

September 20, 1907, the plaintiff filed an additional affidavit of publication to correct the defect of the first affidavit of publication. (Tr. p. 5 and 6, f. 9, 10 and 11.)

The second affidavit of publication was not filed until after motion made by appellees, who filed a special appearance in the action July 20, 1907. (Tr. p. 23, f. 37 and 38.)

The plaintiff applied to the District Court August 9, 1906, upon the defective proof of publication for a default as against the defendants whom it was claimed did not appear in the action within the time provided in the said notice and the court made an order among other things that the defendants were duly served by publication and that the service of notice by publication and said notice of publication be approved and that said complaint be taken as confessed by said defendants, and also appointed a referee to take the evidence produced by the respective parties and to report the same with his findings of fact and con-

clusions of law. (Tr. p. 7, f. 12.) This action was had upon the defective proof of publication of notice of suit as the amended proof of publication was not made upon the date of the order. (Tr. p. 5, f. 9-7, f. 12.)

Thereafter and on the 16th day of March, 1907, and after the adjudication of the default A. B. McMillen, and who is the attorney of record for the plaintiff and appellees, appeared for thirty-one defendants and filed a joint answer for such defendants by which answer the complaint was confessed and concurred in the prayer for relief contained in the said complaint. (Tr. p. 8, f. 13.)

On the day succeeding the filing of the answer, to-wit, March 17th, a judgment for partition of the Alameda Land Grant was entered in the District Court of the County of Bernalillo. (Tr. p. 9 to 21 inclusive, f. 15-33.)

The 7th provision of the judgment for partition is as follows:

*"That Alonzo B. McMillen, as attorney for plaintiff and for a portion of defendants has had full charge and control of said cause, there being no other attorney in said cause representing undivided interests hereafter found, and that the said McMillen procured and introduced all the testimony before the referee in behalf of owners of undivided interests in said grant to establish the rights hereinafter mentioned, and that all persons found to have interests in said grant were bene-*

*fited equally with the plaintiff by the services of said McMillen in conducting the proceedings for the partition of said real estate. That the said Alonzo B. McMillen had contracts with the plaintiff and certain defendants for whom he entered appearance for an undivided one-third part of their respective interests in said grant and that all other persons are unrepresented. And the court further finds from the evidence that the customary and usual fee for such services is an undivided one-third of the interests found to be owned by a given person and that such fee is reasonable and that the said several owners mentioned in said report of the referee heretofore filed herein other than those who provided for compensation by contract are bound to convey to plaintiff's attorney a one-third part of the several interests found by the referee to be owned by them respectively, and it is further ordered, adjudged and decreed that in lieu of said conveyances that this decree stand in the place thereof, and that one-third of the several interests aforesaid with the exception of those who have already conveyed as provided by their contract be deducted from their several interests as found in their said report. (Tr. p. 10, f. 16-17.)*

In the decree the court named three commissioners to partition the premises, and in case such partition could not be made to report such fact to the court. (Tr. p. 21, f. 33.)

The commissioners appointed by the decree made report among other things:

“That owing to the nature of the land most of which is fit only for grazing purposes and owing to the large number of owners, there being more than five hundred, and to the fact that the interests in many instances are very small that partition of said premises cannot be made consistently with the interests of the estate or the rights of the persons found to own interests therein, and that a division thereof would be manifestly prejudicial to the owners thereof.”

The commissioners' report was filed on the 5th day of July, 1907. (Tr. pp. 21-22, f. 34-35.)

Before the court passed upon the report of the commissioners the intervening appellees filed a special appearance in the action by motion on the 20th day of July, 1907. (Tr. p. 23, f. 38.)

This special motion and appearance so made July 20, 1907, resulted in an order by the court which provided among other things, to-wit:

“That this suit and proceeding is still pending; it is hereby ordered that each and all of said persons so appearing by special motion in this action filed on July 20, 1907, as aforesaid, be and they are hereby allowed to appear and answer the complaint of the plaintiff in this action by way of intervention, and that said persons may assert any right, with the same force and effect as though said persons had been made parties in the first instance in this action to which order plaintiffs except. (Tr. p 23, f. 37.)



The interveners pursuant to stipulation between counsel joined in answering the complaint. (Tr. p. 24 to 27 inclusive, f. 39-43.)

Appellee Candido G. Gonzales answered the complaint separately. (Tr. pages 28 to 32 inclusive, f. 45-53.)

March 11, 1909, other persons as interveners pursuant to stipulation between the plaintiff's attorney and the attorneys for said interveners entered said action with the same force and effect as though said persons had been named in the original intervening petition. The attorney for the plaintiff by such stipulation not waiving any objection that he might lawfully have made to any of said parties as interveners had they been named in the original intervening petition. (Tr. pages 34-35, f. 56-57.)

The interveners by their answer put in issue all of the paragraphs of the complaint except paragraphs 2, 3 and 4. (Tr. pages 24 to 27 inclusive, f. 39-43.)

The interveners further admitted that a portion of the land included in said grant in the Rio Grande Valley lying east of the foot hills and below the irrigation ditches is occupied by various persons and claimed in severalty. And interveners denied that they claimed said land in the Rio Grande valley and east of the foothills in severalty by reason of original allotments or by adverse possession only, and allege that they claimed the same in severalty because they have owned and held the same

by themselves and their predecessors in title for more than fifty years last past holding and claiming the same under and by virtue of deeds of conveyance, devise, grant and other assurances purporting to convey an estate in fee simple, and that no claim by suit in law or equity effectually prosecuted has been set out or made to said land and separate holdings for more than fifty years. (Tr. pages 25 and 26, f. 40, 41, 42, 43.)

Intervenors further denied that any of the land lying west of the irrigating ditches and foothills or any portion of the land lying east of said irrigating ditches and foothills or any land whatsoever known as the Alameda Grant are held and occupied by the plaintiff and the defendants other than the unknown heirs of Francisco Montes Vigil, or by any other person or persons as tenants in common. (Tr. p. 25, f. 40.)

The intervenors by way of defense alleged that they were the owners in severalty and in possession respectively of their land situate within the boundaries of the grant and that they and their predecessors in title had possession thereof respectively for more than fifty years prior to such intervention holding and claiming said land by virtue of deeds of conveyance, devise, grant and other assurances purporting to convey an estate in fee simple, and that no claim by suit in law or equity has been set out or made to said land for more than fifty years. The intervenors further alleged that their holdings and their possession of said land

under and by virtue of deeds of conveyance, etc., had been uninterrupted for more than fifty years and that such possession had not been assailed by any suit at law or equity effectually prosecuted for the time stated. (Tr. p. 25, f. 40.)

It was further alleged that the land within said grant lying west of the irrigating ditches are not susceptible of irrigation, and are only valuable and can only be used for grazing purposes, and that the tracts of land owned and held in severalty embrace the lands lying west of said ditches, and also of the lands lying east of said ditches and that portion of said land lying east and west of the irrigating ditches are susceptible of irrigation; that such lands lying east and west of said ditches are parts of the same land, and are embraced and described as such in the several assurances of title of said interveners. It was further alleged in substance that interveners, their predecessors in title have been in the open, actual, hostile, exclusive and continuous possession of each and all tracts of land owned and held by them in severalty for more than fifty years and that during such period of time the interveners, their predecessors in title, and divers other persons and their predecessors in title, respectively, have occupied, cultivated and improved those portions of said land susceptible of irrigation, cultivation and improvement, and have used the remainder of their holdings for grazing purposes, and claim to own their entire individual possession and holdings by virtue of deeds

of conveyance, devise, grant and other assurances purporting to convey an estate in fee simple to each and all of said lands respectively. Interveners further allege that each and all of the lands held in severalty by them are held by them in fee simple, and that the plaintiff and all other persons whatsoever have no right, title or interest therein either as tenants in common or otherwise. (Tr. pp. 25 and 26, f. 41-42.)

The interveners concluded their answer praying that the relief sought by the complaint be denied and that the title of interveners to any and all lands owned by them in severalty or otherwise, be declared and established and duly and forever quieted. (Tr. pp. 26 and 27, f. 43.)

To the intervening petition the plaintiff and the defendants represented by A. B. McMillen interposed a reply denying each and every allegation in said answer and interpleader contained. (Tr. p. 27, f. 44.)

Intervener Candido G. Gonzales filed a separate answer which contains like allegations except as to the description of specific property claimed by the said Gonzales. (Tr. pp. 28 to 32 inclusive, f. 45-53.)

The plaintiff replied to the intervening petition of Gonzales by denying every allegation contained in said intervening petition. (Tr. p. 33, f. 54.)

It appears that on January 24, 1909, and after the decision as to the rights of interveners had been announced by the court A. B. McMillen filed

an answer by which he claimed to be the owner of the undivided 26857-60480 part of the Alameda Land Grant, and said McMillen joined in the prayer in the said complaint for a partition of said land. (Tr. p. 33, f. 54.) The interveners had no notice of the filing of such answer by McMillen until the same was brought to their attention by the Transcript of Record filed in the Supreme Court of the Territory of New Mexico.

March 11, 1909, the court confirmed the report of the commisisoners and ordered a sale of the grant with the following reservation, to-wit:

“And the court having announced its decision in the intervention proceedings of Candido G. Gonzales, and other interveners represented by George S. Klock and A. A. Sedillo and of the intervener Jacobo Yrissari favorable to the respective interveners, but the decree fixing the rights of the said interveners not having been entered of record, and it appearing advisable that the respective decrees in favor of interveners should be separately entered, it is ordered that the order of sale herein, and the sale to be made in pursuance thereof shall be subject to the rights of said intervener respectively, as established by such order, judgment and decree as shall be finally made in favor of said interveners respectively either in this court or in any proper appellate court on appeal.” (Tr. p. 36, f. 58.)

The court further ordered, adjudged and de-



creed that the premises described in the judgment should be sold at public auction subject however to the exception, conditions and reservations hereinbefore mentioned. (Tr. pp. 36 and 37, f. 59-60.)

The decision of the court is embodied in the findings of fact and conclusion of law and final decree. (Tr. pp. 37 to 124 inclusive, f. 61-229.)

The conclusion of law upon the findings of fact is as follows:

“That each and every intervener is entitled in severalty and in fee simple absolute to the portion and portions of land described in the findings of fact relating thereto to which reference is made for further definition and identification, and that the plaintiff herein and the heirs of Captain Juan Gonzales are barred thereof forever.” (Tr. p. 97, f. 173.)

The decree of the court among other things provided as follows:

“It is therefore, ordered, adjudged and decreed that the said interveners above mentioned are entitled to hold the tracts of land set off to them in the foregoing decree in severalty, free from all claim or claims of the plaintiff in this action and her co-tenants or their successors or assigns. And the plaintiff, her co-tenants and their successors or assigns are enjoined and forever barred from claiming any right, title or interest in or to any of the land above described, whether under the decree of partition heretofore entered

in this cause or otherwise." (Tr. p. 124, f. 228.)

The court made a general finding of fact and which is No. I, and is as follows:

"The interveners claim strips of land within the Alameda Grant very narrow in proportion to their length, most of them being only a few yards in width each, and extending from the Rio Grande west to the ceja, or ridge dividing the watershed of the Rio Grande from that of the Rio Puerco and forming the western boundary of the grant, a distance of about sixteen miles. Most of them include land between the Rio Grande and the foothills at the west of the valley, which is adapted for cultivation, and the land extending from the foothills to the ceja of the Rio Puerco which is adapted for grazing only. Most of the interveners live on the easterly ends of the strips of land they claim, and cultivate such portions of the bottom lands between the river and the foothills in the respective strips as they require. Near the river the land is what is termed 'the bosque;' that is land covered with brush, trees and wild grass, and is used for pasturage. In the valley the strips of land are to some extent separated by fences, and to some extent the bosque is separated in that way from the cultivated lands. From the foothills west there are no fences, nor are there any fences at the western boundary of the strips or of the grant. By a stipulation between the par-

ties the titles to the land between the river and the foothills are not to be determined in this action, but that does not exclude the evidentiary bearing, if any, which the use, occupation and claims of possession and ownership of these lands by interveners respectively, so far as they appear in evidence, may have from their use, occupation, and claims of possession respectively of the land extending westerly from the foothills. The last named land bears a scanty growth of grass and other herbage, and is without water, it being customary and necessary to have the animals pastured there go to the Rio Grande for water at intervals of three to four days, except for short and infrequent periods when their needs are supplied by rain or snow. By agreement, or common understanding, which has ripened into a general custom, the interveners and their predecessors in claim of ownership have used these westerly portions of the strips they claim, in common with each other and with others claiming ownership in the grant, no one attempting to keep his animals exclusively on the land he claimed, nor requiring others claiming ownership to keep their animals off such land. To some extent those who were not claiming ownership of any land within the grant pastured their animals on the portion of it in question west of the foothills and on the strips claimed by the interveners with the other animals pastured there, without objection by those who claimed the strips, but without their consent, except as they failed to take active measures to prevent

such intrusion. This method of use was the one most convenient, economical and advantageous to the interveners and as to all the strips, except the northern one of Gonzales, the only practicable one because of the size and shape of the respective strips which would make the expense of fencing them greatly disproportionate to their value, the character and location of the land, the scantiness of herbage and the lack of water upon it, and for no other reasons, appearing in the evidence." (Tr. pp. 37 to 38, f. 61-62.)

The court also made a general finding on request of the plaintiff that Captain Juan Gonzales lived upon said Alameda Land Grant and that there has always been a large number of the heirs of said Captain Juan Gonzales living within the boundaries of said Alameda Land Grant, and enumerates a portion of said heirs. (Finding of fact LXXXII, Tr. pp. 95-96, f. 171-172.)

And also made general finding LXXXIII as follows:

"It appeared, however, and is so found, that from a time further back than the memory of any witness extended, the greater part of the land within the limits of the grant has been claimed and occupied in strips as set forth in Finding of Fact I, the land from the foothills to the ceja of the Rio Puerco in common pasturage, and the bottom lands generally by those claiming the ownership of them separately, as set forth in said finding.

It did not appear that the heirs of Captain Juan Gonzales or any of them living within the boundaries of the grant had ever claimed or asserted any right to or interest in any portion of said land grant except such strips as they claimed respectively until and except as appears from warranty deed from Juan Antonio Rodarte to A. B. McMillen for an undivided one-twenty-fourth part of said grant, dated January 8, 1907, and by warranty deed from Merced Gonzales de Romero and Fabiana Gonzales for the undivided one-fifty-sixth part of said grant dated February 27, 1907, and it did not appear that they or any of them occupied any portion of such grant except as others within the grant occupied and used the strips they claimed, the bottom lands in severalty and the grazing lands in common, as set forth in said Finding of Fact." (Tr. p. 96, f. 172.)

The court also made especial findings of fact as to the lands claimed by each of the interveners, all of which said special findings are uniform as to form and applicable to the respective strips claimed by them as they appear in the list of strips attached to said findings and made a part thereof as shown in finding LXXIV. (Tr. pp. 89 to 93 inclusive, f. 162-167.)

And we here cite one of such special findings as illustrative of the same and of each thereof, to-wit, Finding of Fact III, which reads as follows:

"Condado G. Gonzales, one of the in-



terveners, claimed a strip of land situated within the Alameda Land Grant, extending from the Rio Grande on the east to the ceja of the Rio Puerco on the west, and containing 288 varas in width from north to south, and bounded on the north by land claimed by Conrado A. Gonzales, and on the south by land claimed by the heirs of Diego Sanchez; which said strip corresponds to strip No. 4 of the list of strips hereinafter referred to, and is claimed by intervener and his predecessors in title by virtue of certain deeds of conveyance and devises purporting to convey an estate in fee simple thereto, for more than ten years next preceding the beginning of this action, and consists of bottom land between the Rio Grande and the foothills and the mesa or upland, extending west from the bottom land to the ceja of the Rio Puerco. Of the latter land he and his predecessors in title have had such possession as that prescribed in Finding I of Fact herein, for more than ten years next preceding the beginning of this action.

"On the easterly portion of said strip, that between the Rio Grande and the foothills said intervener and his predecessors in title, have lived in houses which they built and have built on, fenced, and cultivated such portions of said valley land as they required for their purposes, crops and stock for more than ten years next preceding the beginning of this action; and in connection with it, they used the portion of said strip extending from it to the ceja of the Rio Puerco, as set forth in said Finding I of Fact herein." (Tr. pp.

40 and 41, f. 66-67-68.)

And all of which said special findings of fact are numbered from II to LXXIII inclusive and appear fully in Tr. pp. 38 to 89 inclusive, f. 63-161, and are followed by said Finding of Fact LXXIV containing said list of strips hereinbefore referred to. (Tr. pp. 89 to 93 inclusive, f. 162-167.)

The appellants have assigned twelve errors for this review. We will not discuss these alleged errors in the order of statement but will consider them as the questions arose in the progress of the cause.

The errors assigned in the fifth and twelfth paragraphs of the assignment will be first considered.

Appellants contend that the decree of partition entered on the 17th day of June, 1907, was a final decree as to all adverse claimants and the said decree not having been vacated by the district court had become final and absolute as between the appellants and interveners and that the decree following the intervention was inconsistent with and contrary to the first decree in partition.

## POINTS AND AUTHORITIES.

THE DECREE OF PARTITION WAS INTERLOCUTORY AND WAS NOT A FINAL DECREE UNTIL AFTER THE DISTRICT COURT CONFIRMED THE REPORT OF THE COMMISSIONERS AND ORDERED THE SALE OF THE PROPERTY.

At the time of the institution of this action sections 3179 to 3186 inclusive, Compiled Laws of New Mexico, 1897, were in force. These statutes embodied all of the procedure relative to the partition of property in the then Territory of New Mexico. Section 3182 is as follows:

"During the pendency of any such suit or proceeding any person claiming to be interested in the premises may appear and answer the petition and assert his rights by way of interpleader and the court shall decide upon their rights as though they had been made parties in the first instance."

Under this statute the suit or proceeding was pending at the time interveners filed their motion July 20, 1907. The words "suit" or "proceeding" are comprehensive, and either word would include any action necessary to perfect a sale of the property partitioned or the division of such property to the hour of confirming what had been done by the commissioners to determine whether the property was so circumstanced as to admit a partition or whether the condition of the

property was such that a sale thereof was determined to be inevitable in order to protect the rights and interests of those interested in the property. The record before the court proves without argument that the suit as well as the proceeding was pending at the time of making the order of intervention.

Section 3182 Compiled Laws 1897 was amended by sub-section 269 of Chapter 107, of the Acts of the 37th Legislative Assembly, 1907, the amended section reading as follows:

“During the pendency of such suit or proceeding any person claiming to be interested in the premises may appear and answer the petition or complaint and assert his rights by way of intervention, whether such interests be derived or claimed under the common source of title or otherwise and the court shall decide upon their rights as though they had been made parties in the first instance.”

At the time of entering the interlocutory decree of partition in this case sub-section 269 was in force. This sub-section was also in force at the time of interveners' motion of July 20, 1907, and at the time of entering the order permitting the intervention of November 20, 1907. The amendment was not necessary to enlarge the rights of the interveners as under section 3182, Compiled Laws, 1897, the interveners were seasonable in making their application for such intervention,

and under sub-section 269 of Chapter 107, Laws of 1907, the plaintiff had no concern how the interests of interveners in the property was derived or claimed, whether under the common source of title or otherwise. The original statute relative to partition and the amendments thereto both uphold our contention that the decree of partition is interlocutory. The case or proceeding is not finally disposed of until the report of the commissioners is confirmed and in case a sale of the property is recommended in such report until the report of sale is confirmed, and the moneys derived therefrom are paid into court and decreed to the parties by the court. Reading sections 3184 and 3185, Compiled Laws, 1897, and sub-sections 271 and 272 of Chapter 107 Laws of New Mexico, 1907, the interlocutory character of the proceedings is evident under both the first and later statutes until the court has finally confirmed the sale.

“The judgment of partition is interlocutory and must in the absence of any statute expressly or impliedly changing the rule, be regarded ‘as in the breast of the judge,’ until final judgment is entered, and therefore subject to amendment.”

30 Cyc. sub-division 6, p. 252.

*Randels vs. Randels*, 63 Ind. 93.

*Aull vs. Day*, 133 Mo. 337.

*Warren vs. Williams*, 25 Mo. App. 22.

*Mingay vs. Lackey*, 142 N. Y. 449.

*Schweitzer's Estate*, 4 Lanc L. Rev.

(Pa.) 369.



*Zittle's Estate*, 4 *Lans. L. Rev. (Pa.)*  
163.

"The interlocutory orders and decrees made by the court in a suit for partition are under the absolute control of the court, and at any time before the final decision may be modified or rescinded."

15 *Ency. P. & P.* 810, and cases cited.  
*Warren vs. Williams*, 25 *Mo. App.* 22.  
*Aull vs. Day*, (*Supra.*)  
*Hart vs. Stedman*, 98 *Mo.* 457.  
*Halloway vs. Halloway*, 103 *Mo.* 284.

"In the action for partition, the interlocutory judgment whereby it is directed that partition be made, is called judgment '*quod patitio fiat*,' while the style of the final judgment in the same action, confirming the partition made, upon the return of the writ, is '*quod partitio facta firma et stabilis in perpetuum*.'"

1 *Black on Judgments*, Sec. 17, and  
authorities and cases cited.  
3 *Bla. Comm.* 296.

"According to the usual practice in proceedings for partition of land, a preliminary judgment or decree is rendered, directing that partition be made, '*quod partitio fiat*,' and nominating certain persons to effect a division and report to the court. When the report is confirmed, or the method of apportionment otherwise fixed, and all the rights of the parties adjusted and settled, another judgment is entered declaring that the partition shall

stand as approved. Now the first decree in these proceedings, establishing the existence of a co-tenancy ordering that partition be made, and appointing commissioners, is generally interlocutory."

1 *Black on Judgments*, Sec. 39, and cases cited.

*Grun vs. Fiske*, 103 U. S. 518.

*Id.* 154, U. S. 668-26-486.

*Elder vs. McClaskey*, 17 C. C. A. 251, 70 Fed. 529.

*Gesell's Appeal*, 84 Pa. 238.

*Beebe vs. Griffing*, 6 N. Y. 465.

*Temple vs. Steptoe*, 1 Munf. (Va.) 339.

*Young vs. Skipwith*, 2 Wash. (Va.) 300.

*Putman vs. Lewis*, 1 Fla. 465.

*Medford vs. Harrell*, 10 N. C. 41.

*Clester vs. Gibson*, 15 Ind. 10.

*Davis vs. Davis*, 36 Ind. 160.

*Curran vs. Maginniss*, 41 Ind. 398.

*Pipkin vs. Allen*, 49 Mo. 229.

*Durham vs. Darby*, 34 Mo. 447.

*Ivory vs. Delore*, 26 Mo. 505.

*Gates vs. Salmon*, 28 Cal. 320.

*Peck vs. Vandenberg*, 30 Cal. 11.

*Mills vs. Miller*, 2 Neb. 299.

*Murray vs. Yates*, 73 Mo. 13.

In the case of *Green vs. Fiske*, 103 U. S. 518, (*supra.*), a case in which the question as to whether a decree of partition settling the several interests of the parties in the property and referring it to a master to proceed to a partition according to law and the direction of the court is interlocutory or final was directly in issue before said appellate court, it was held that

"A decree cannot be said to be final until the court has completed its adjudication of the cause. Here the several interests of the parties in the land have been ascertained and determined, but this is merely preparatory to the final relief which is sought; that is to say, a setting off to the complainant in severalty her share of the property in money or in kind. This can only be done by a further decree of the court. Ordinarily, in chancery, commissioners are appointed to make the necessary examination and inquiries and report a partition. Upon the coming in of the report, the court acts again. If the commissioners made a division, the court must decide whether it shall be confirmed before the partition, which is the primary object of the suit, is complete. If they report that a division cannot be made and recommend a sale, the court must pass on this view of the case before the adjudication of the parties can be said to be ended."

"In this case, a partition by sale was asked for because the property was not susceptible of division in kind. That, the court has not ordered, and the reference to the master was undoubtedly to ascertain, among other things, whether such proceeding was in fact necessary in order to divide the property. The master was in every thing to proceed under the direction of the court. He had no fixed duty to perform. He was the mere assistant of the court, not in executing its process, but in completing its adjudication of the partition which was asked.

There are, still, questions in which the parties have each a direct interest, and they must be determined judicially before the relief has been granted which the suit calls for."

This decision is abundantly supported by authority and followed as a fixed rule of law in such cases.

See cases cited to

*Green vs. Fiske*, Vol. 10, Notes on U. S. S. C. Reports, by Rose, Page 83.

See also

60 *American Decisions*, 434, Note.

"All judgments which have something to be done by the court, prior to the determination of the final rights of the parties and not putting an end to the suit or action in which it is entered, are interlocutory. It makes no difference whether the proceedings are prosecuted at law or in equity, or what issues are in the proceedings, or what questions may be raised by the pleadings, or whether there is default upon the part of any or of all the defendants. There are questions that must be settled by the court before the final ending of the suit because in all cases of this kind, the rights of the party are before the court, and the complainant, if in good faith, is praying that such rights may be settled. If not in good faith, then it becomes necessary for the court to correct all errors, upon the part of the complainant, whether arising from bad

faith or otherwise, and make its decree, which decree becomes part of the record in the action, and a part of the record of the estate sought to be partitioned affecting for all time to come, whether there is an issue or not. The moieties or shares of the co-tenants must be determined, the rights of all occupants, and when made parties, the position and right of all who may have liens upon the premises. This is in the form of a decree of the court, and is placed upon record before the division or a sale of the premises; thus it becomes a determination in the action, and a record made as such determination after the beginning and before a final ending of the action. Therefore it is a judgment that it is interlocutory. It is the province of the court to determine between whom and in what proportion, and in what manner a division shall be made. If the circumstances are such that a division cannot be made of the premises, without injury to the co-owners, then it becomes the province of the court to direct a sale, and to decree how that sale shall be made, and to direct a division of the proceeds of such sale in accordance with the rights and equity of the co-owners of the property."

*Knapp on Partition*, pages 202-203, citing *Emeric vs. Alvarado*.

64 Cal. 529; *Booth Real Actions*, 244.

*Daniel's Chancery Practice*, 2254.

*Ham vs. Ham*, 34 Me. 218.

"An order in partition, declaring the rights of the parties and appointing



commissioners to make partition is not a final one from which an appeal lies."

*Beede, et al vs. Griffin (Supra).*

*Robinson vs. Glancey, 69 Pa. St. 89.*

*Clarke vs. Baird, 98 Cal. 642.*

*Tompkins vs. Hyatt, et al, 19 N. Y. 534.*

*McKeon vs. Officer, 127 N. Y. 687.*

The trial and Supreme courts, therefore, correctly took the view that the decree of partition pending in this case was merely interlocutory and that the suit and proceeding instituted by the complainant was still pending both in its order permitting this intervention and in the subsequent proceedings had in connection therewith and in the further orders and decrees rendered and entered in the original suit or proceeding as shown by the record.

Counsel for plaintiff, A. B. McMillen, who also appears as counsel for a number of defendants and for himself as plaintiff and defendant took the same view as that of the court, and on February 24, 1909, nearly two years after the interlocutory decree of partition, and which he claims as final, filed an answer by which he claimed he owned nearly one-half of the grant and which the complaint alleges contains 89,346 acres of land. (See Answer of McMillen, Tr. p. 33, f. 54.)

The decree of partition was merely interlocutory and was not the final judgment of the trial court in such suit or proceeding.

30 Cyc. 301-2, and cases cited.

The rights of the interveners, were seasonably asserted, and the court properly allowed the intervention.

*Baca vs. Anaya*, 14 N. Mex., 382-398.

The interlocutory decree was vacated by the statute at the time the order was made allowing the intervention. Section 3182 Compiled Laws, 1897, is mandatory as to the right of intervention during the pendency of "such suit or proceedings," "and the court shall decide upon their rights as though they had been made parties in the first instance." This provision is also contained in sub-section 269, Chapter 107 of the Laws of 1907. Having been permitted to intervene all prior proceedings as to the interveners are vacated and of no legal effect. The rights of interveners can be asserted with the same force as though present in the action at its inception and interposing resistance to every step taken by the plaintiff in the cause. The order of intervention so provides. The order is based upon the statute. The decree of sale was not made until March 11, 1909, after the court had announced its decision in the intervention proceedings of Candido G. Gonzales and other interveners. This decree of sale and which is the final decree, provides:

"It is ordered that the order of sale herein and the sale to be made in pursuance thereof shall be subject to the rights of said interveners as established by such order, judgment and decree as shall be finally made in favor of said interveners respectively either in this court or in any proper appellate court on appeal." (Tr. p. 36, f. 58.)

This refers clearly to the order, judgment and decree subsequently made and entered in this cause, and such decree when made by the court upon its decision previously rendered provides:

"That the said interveners above mentioned are entitled to hold the tracts of land set off to them in the foregoing decree in severalty, free from all claim or claims of the plaintiff in this action and her co-tenants or their successors or assigns. And the said plaintiff, her co-tenants and their successors or assigns are enjoined and forever barred from claiming any right, title or interest in or to any of the said lands above described, *whether under the decree of partition entered heretofore in this cause or otherwise.*" (Tr. p. 124, f. 228.)

So far as we have been able to examine the authorities cited by the appellants under the first assignment of error they relate to a final and not to an interlocutory judgment. The final judgment was not entered until after the intervention and the decision of the court as to interveners' rights.

The decision of the court establishing the interveners' rights in the property did not interfere with the computation of the fractional interests of each person set forth in the interlocutory decree. What substance was left of the property subject to partition was to be partitioned among such persons or in case partition thereof could not be made was to be sold and division of the proceeds made among the persons entitled thereto should the commissioners so report and the court so determine by its final judgment.

Appellant deemed a further decree necessary. The first decree was interlocutory, it did not provide for the sale of the property; it did provide for a partition and division thereof. Section 3184 Compiled Laws New Mexico, 1897, provides that when the court decrees a partition of premises it shall appoint three commissioners and the commissioners are to make partition in accordance with the decree of the court as to the rights and interests of the parties, and if, after an examination of the premises by the commissioners they report whether a partition can be made consistently with the interests of the estate if such partition cannot be made they so report to the court.

"And the court may upon the coming in and filing of such report, make all such orders thereon, as may be necessary to a final disposition of the case."

Section 3184 was reenacted in 1907. See sub-



section 271, p. 288, Laws of New Mexico, Chapter 107, 37th Legislative Assembly, 1907.

The sixth, seventh, eighth, ninth, tenth and eleventh paragraphs of the assignment assail the findings of fact and conclusion of law of the district court and affirmed by the Supreme Court. These findings and this conclusion are made the basis of the decree in which it is determined that the interveners are the owners in severalty and in fee simple absolute of the real estate specifically described in the decree and that the plaintiff and the heirs of Captain Juan Gonzales are barred thereof forever. We shall therefore discuss under the next sub-division of this brief the errors assigned in the paragraphs from six to ten inclusive.

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**THE INTERVENERS ESTABLISHED TITLE TO THE STRIPS OF LAND CLAIMED BY THEM AND THE FINDINGS OF FACT WARRANTED THE DECREE IN FAVOR OF SUCH INTERVENERS.**

In the year 1858 the legislative assembly of the Territory of New Mexico enacted as follows:

"Sec. 1. In all cases where any persons or persons, their heirs or assigns, shall at the passing of this act or at any time after, having had possession for ten years of any lands, tenements, or hereditaments which have been granted by the governments of Spain, Mexico or the United States, or by whatsoever authori-



ty empowered by said governments to make grants to lands, holding or claiming the same by virtue of a deed or deeds of conveyance, devise, grant or other assurance purporting to convey an estate in fee simple, and no claim by suit in law or equity effectually prosecuted shall have been set up or made to the said lands, tenements or hereditaments, within the aforesaid time of ten years, then and in that case, the person or persons, their heirs, or assigns, so holding possession as aforesaid, shall be entitled to keep and hold in possession such quantity of lands as shall be specified and described in his, her or their deed of conveyance, devise, grant or other assurance as aforesaid, in preference to all, and against all, and all manner of person or persons whatsoever; and any person or persons, their children or their heirs or assigns, who shall neglect or who have neglected for the said term of ten years, to avail themselves of the benefit of any title, legal or equitable, which he, she or they may have to any lands, tenements or hereditaments, within this Territory, by suit of law or equity effectually prosecuted against the person or persons so as aforesaid in possession, shall be forever barred, and the person or persons, their heirs or assigns, so holding or keeping possession as aforesaid shall have a good and indefeasible title in fee simple to such lands, tenements or hereditaments: Provided, that if any person or persons that have been, are or shall be entitled to commence and prosecute such suit in law or equity, shall have been, be or shall be, at

the time of said right or title first descended or accrued, come or fallen within the age of twenty-one years, *feme covert*, *non compos mentis*, imprisoned, or beyond the limits of the United States and the territories thereof, that then such person or persons, his, her or their heir or heirs, shall or may, notwithstanding the ten years be expired, bring his or her suit or action, as he, she or they might have done before the passage of this act so as such persons or persons, or his, her or their heir or heirs, shall within three years next after his, her or their full age, discovery, coming of sound mind, enlargement out of prison, coming into the United States or the territories thereof, or death, take benefit of and commence such suit, and at no time after the said three years: Provided, also, that in the construction of this saving, no cumulative disability shall prevent the bar aforesaid, but shall only apply to that or those disabilities which existed when the right to sue first accrued and no other: and Provided, also, that such suit so commenced, shall be a suit prosecuted with effect and no other.

"Sec. 2. No person or persons or their heirs shall have, sue, or maintain any action or suit, either in law or equity for any lands, tenements or hereditaments but within ten years next after his, her or their right to commence, have, or maintain such suit shall have come, fallen, or accrued, and that all suits either in law or equity for the recovery of any lands, tenements or hereditaments shall be had and sued within ten years next after the

title or cause of action or suits accrued or fallen, and that no time after the ten years shall have passed. Provided, that if any person or persons that is or shall be entitled to commence and prosecute such suit or action in law or equity be or shall be, at the time of said right or title first accrued, come or fallen within the age of twenty-one years, *feme covert*, *non compos mentis*, imprisoned or beyond the limits of the United States, and the territories thereof, that then such person or persons, his, her or their heir or heirs shall and may, notwithstanding the said ten years be expired, bring his or her suit or action, as he, she or they might have done before the passage of this act, so as such person or persons, his, her, or their heir, heirs, shall within three years next after his, her or their full age, discoveriture, coming of sound mind, enlargement out of prison, coming into the United States or the territories thereof, or death, take benefit of and commence such suit, and at no time after the said three years. Provided, also, that in the construction of this saving, no cumulative disability shall prevent this bar, but shall only apply to that or these disabilities which existed at the time when the right to sue first accrued and to no other. Provided, further, that such action so commenced shall be an action prosecuted with effect and no other.

"Sec. 3. All laws and parts of laws in conflict with this act are hereby repealed.

"Sec. 4. This act shall be in force from and after its passage."

*Chapter 17, Laws of New Mexico, 1858,*

*pages 64, 66 and 68.*

We have set forth the original statute at length and Section 1 is now section 2937 of the Compiled Laws of New Mexico, 1897. Section 2 of said Act is now Section 2938 of the same compilation. It will be seen by a comparison of the original act with the section as set forth in the Compiled Laws that there has been no change in the sense of Section 1. There has been but one amendment to Section 1 and which is to be found in Chapter 63, Section 1 of the Acts of the 33rd Legislative Assembly, 1899; and such amendment relates only to the rights of persons who may be under disability at the time a cause of action may accrue. Section 2, and which is now Section 2938 of the compilation was amended by Section 2 of Chapter 63 of the Laws of 1899, and further amended by Chapter 76 of the Acts of the 36th Legislative Assembly of the Laws of 1905.

With the exceptions mentioned the original act with slight changes in phraseology and which does not affect the meaning, the original act remains the same. It is clear that the legislature in enacting Chapter 17 of the laws enacted in 1857 and 1858 and which later became Section 2937 of the compilation of 1897 were moved by the manner in which lands were held, controlled and owned in the Territory. At the outset, we state that whatever right interveners may have are based upon and sustained by Section 1 of Chapter 17



of the Laws of 1857 and 1858, now Section 2937 of our present compilation, and in discussing the act we refer to Sections 2937 and 2938 under their respective numbers. To ascribe to Section 2937 the meaning sought to be given to it by the appellant would nullify completely the section. There would be no purpose whatever in the enactment. The law was made to extirpate an evil which was then making itself felt within the Territory. There were these very large land grants made by the government of Spain and which were gradually being entered upon by the settlers. The republic of Mexico following the achievement of its independence from the parent country had continued the policy of granting lands to individuals. These grants were dormant and useless until population made settlement thereon. In the possession of the titled grantee (and we refer to a military title) they were a source of weakness rather than of strength to the province. Prior to the enactment an increasing number of people from year to year were seeking settlement upon these grants and were making use thereof by a civilized cultivation. Transfers of land embraced within land grants had been made with considerable frequency. This is evident from the very large number of exhibits in the case at bar. The grantees of the grant in many, if not in most, instances when the contest between the Republic of Mexico and the United States in the war of 1846-47 came on and was ended by the Treaty of Guada-



lupe Hidalgo, abjured the province of New Mexico and remained citizens of the Republic of Mexico. The people of the Territory were thoroughly familiar with the existing conditions and with the prior traditions and practices. The legislature, therefore, enacted the statute in question and intended to create and did create, a right as to real property acquired in a land grant and provided another and different rule of limitation as to real property which might be adversely acquired under Section 2938. It is a controlling fact that the two sections were enacted at the same time and formed one act; and that at the time of making the law the legislature had this distinction in mind. Words cannot be plainer than the words used in Section 2937. To obviate danger of a future perverted judicial construction the legislature construed the act by making its provisions so clear that the dullest mind might comprehend it. The section conferred a right, and by setting a limitation, protected such right after it was acquired. We find no such purpose in Section 2938.

The latter section is a Statute of Limitations only. No right whatever is conferred. The remedy of a claimant to land seeking to recover the same in an action after the limitation has expired is suspended. In the beginning Section 2937 says, and we repeat the language is pungent and effective:

*"In all cases where any person or per-*

sons, their children, heirs or assigns, shall at the passing of this act or any time after, having had possession for ten years of any land, tenements or hereditaments which have been granted by the governments of Spain, Mexico or the United States, or by whatsoever authority empowered by said governments to make grants to land, holding or claiming the same by virtue of a deed or deeds of conveyance, devise, grant or other assurances, purporting to convey an estate in fee simple, and no claim by suit in law or equity effectually prosecuted shall have been set up or made to the said land, tenements or hereditaments, within the aforesaid time of ten years, then and in that case, the person or persons, their children, heirs or assigns, so holding possession as aforesaid shall be entitled to keep and hold in possession such quantity of land as shall be specified and described in his, her or their deed of conveyance, devise, grant or other assurance as aforesaid, in preference to all, and against all, and all manner of person or persons whatsoever."

This is much more than an act of limitation. It confers a right. It confirms a title acquired in the manner set forth in the statute. What is essential to the confirming of this title? The act points out the way, to-wit, ten years' possession under deeds of conveyance, devise, or other assurance. This length of possession is conclusive evidence of an estate in fee simple. What can the persons hold who have such deeds of convey-

ance, devise or other assurance purporting to create and convey an estate in fee simple? We look into the statute for a conclusive answer that *"they shall be entitled to keep and hold in possession such quantity of lands as shall be specified and described in his, her or their deeds of conveyance, devise, grant or other assurance as aforesaid in preference to all and against all and all manner of person or persons whatsoever."*

We ask: Why should this statute be so explicit if it was not the purpose and intent of the legislature to confer a right as well as to establish an act of limitation? Why should the words be used *"against all, and all manner of person or persons whatsoever?"* Such words are not used in Section 2938. Such sense is not expressed in the latter section. Such intent is absent. Why the use of the words, *"in preference to all, and against all, and all manner of person or persons whatsoever,"* if it were not intended by the legislature to forever exclude and bar the rights of the heirs of the common grantee and his assigns of the grant. Human language cannot be plainer. Intent cannot be more clearly expressed. Even had the law makers made use of the words, *"tenants in common, co-tenants, joint tenants,"* or *"coparceners"* and had excluded them from participating in the ownership of the land so held and occupied under such deeds of conveyance, devise, grant or other assurance, the legislative intent would not have been more plainly expressed. The

words, "in preference to all, and against all, and all manner of person or persons whatsoever" include every definition of ownership or title or dominion over real property. It is manifest that it was the legislative intention by the enactment to reach into the future and effectually foreclose any property rights which might be claimed by the heirs and descendants of the common grantee and his assigns. A cogent reason for the enactment noticeable then as well as at the present time was that persons purchasing land within the limits of the grant should not be disturbed in their possession, in their long vested rights. That evidence which might be available to them would by the lapse of long periods of time become unavailable, and the Legislature not only intended, but actually did protect the titles in all persons who brought themselves within the provisions of the Act.

The words, "shall at the passing of this act or at any time after," are ominous with meaning and relevancy to the construction to be placed upon it. The cases cited by the appellants are not applicable to the construction of Sec. 2937; they are based upon statutes wholly dissimilar,—statutes, like unto that of Sec. 2938—and therefore these cases can not be considered in the construction of Section 2937. We must read with care the arrangement and expression of Section 2937—the comprehensive term by which the meaning and intention is expressed,—and then compare it with Section



2938. The meaning of Section 2937 is made more clear when read with Section 2938. Section 2937 confers rights; assures them; protects titles; prescribes the boundaries of lands, and what can be held when included within such boundaries. Section 2938 is an act of limitation and nothing more, no right whatever is conferred. Remedy by ejectment or in trespass or in certain cases for partition is suspended.

We request that the court in reading the original act, Chapter 17, of the Laws of 1857 and 1858, note the annotation on the margin of Section 1, to-wit, "Ten years' possession with color of title to be best title." Again, "Adverse claimants barred." Also the marginal note to Section 2, now Section 2938, "Claimants to land, etc., barred after ten years from time of title approved."

In the compilation of 1897 the marginal note, Section 2937, is, "Possession ten years uninterrupted, gives title." Section 2938 "Actions not maintainable."

The marginal notes referred to show the accepted interpretation of the two sections at the time of their enactment, and such interpretation has never been departed from, and will not be, so long as the sections remain in force or until judicial legislation overturns the expressed intent of the law-making body of New Mexico, as declared more than fifty years ago.

We must also consider in construing the act the conditions existing at the time of its enactment.



It was within the decade following the acquisition of New Mexico by the United States. American and European settlers were coming this way. The native population was also increasing and it was obvious to the people and the law-making power that efforts would be made as such efforts are now being made, to disturb grantees, occupiers, heirs, and devisees in their respective possessions held by written evidence of title. Possession that these claimants had lawfully acquired and for which they had paid a consideration. These settlers and occupiers had defended the soil and the people occupying it from the incursions of the Indians. This had been done at a very great sacrifice. The history of the times is familiar and at hand. It forms a part of the permanent literature of the southwest and especially of the domain included within New Mexico and Arizona. The law-making power confronted with these conditions and appreciating the necessity for legal protection, not only from fictitious claimants but from claimants who had long slept upon their rights as well, enacted the statute, and assured protection to persons possessing land described in their deeds, assurances and devisees "in preference to all and against all and all manner of person or persons whatsoever," or "and any person or persons, their children, or their heirs, or assigns, who shall neglect or who have neglected, for the said term of ten years, to avail themselves of the benefit of any title, legal or equitable which he, she or they may

have to any land, tenements or hereiditaments within this Territory by suit at law or equity effectually prosecuted against the person or persons as aforesaid in possession shall be forever barred."

This case turns upon the construction to be given Section 2937. The appellants ask to have destroyed and made ineffective Section 2937. Ask to have read into the Act the decisions referred to in the brief, and which decisions are foreign to the act in question, and were made by courts in the construction of acts of limitation wholly different from Section 2937. None of the acts of limitation which were the basis of the decisions cited in the appellants' brief are similar to the act here. Not one of such acts confirms a title. Much more could be said in analyzing Section 2937; but we believe that sufficient has been said to make clear to the court that Section 2937 was to protect persons holding and claiming lands as defined therein against all and all manner of persons and their children and which includes persons contending for said lands and who base their claims upon the alleged fact that they are tenants in common with those holding under deeds of conveyance or by devise, grant or other assurance. Consider the age of the Alameda Land Grant. Undoubtedly other grants within the late Territory are superior in age. The Alameda grant bears date January 2, 1710. It was an individual grant, and by the original grantee was conveyed July 18, 1712, to

Captain Juan Gonzales. At the time of enacting Section 2937 this grant was 146 years old. Five generations are included within this space of time, in the evolution of which, settlement upon the grant would be made by numerous people. There would be devisees. There would be conveyances of property. There would be persons to inherit the title of their ancestors. There would be exchanges of title, and it was for the protection of persons acquiring lands in this grant that made the enactment of 2937 necessary; and it was to protect the owners of land from claimants who asserted that they were tenants in common of a grantee, or of his or their grantees. The case is not to be decided by any definition of adverse possession which the Legislature of the Territory wrote into Section 2938 by Chapter 76 of the Acts of the 36th Legislative Assembly of 1905. This amendment applies only to Section 2938. The title to the Act refers to 2937, but the Act itself by Section 2 refers alone to Section 2938. Reference is made in the appellants' brief to the payment of taxes upon interveners' land. There is no finding upon this subject in the case. The question is not before the court. The presumption is that the taxes if any, have been paid. Section 2937 does not require the payment of taxes as an essential prerequisite to the claim of adverse possession. Indeed, Section 2937 does not require that the possession shall be adverse. Actual or constructive possession for the required period of ten years is

all that is necessary in confirming the title.

The sovereignty had parted with the title of this grant. It was a perfect grant from its inception and was so declared to be by the Court of Private Land Claims, and the question is not between the sovereignty and the interveners, who were not claiming through a grant of Spain, Mexico or the United States but are claiming from their possession as prescribed and defined in Section 2937, and it is well here to assert that every finding of fact is based upon deeds, devises, grants or other assurances purporting to convey an estate in fee simple. The appellants seek to establish the requisites necessary to sustain adverse possession. The various heads under which this contention is made are what is required under the statutes of other jurisdictions, no one of which is similar to Section 2937. What is required under Section 2937 is possession, and such possession is the property included in the various instruments of title mentioned in the statute. The Findings of Fact conclude appellants upon this point, and are conclusive against all manner of persons whatsoever.

The appellants contend that because of lapses in the settlement and apparent occupation of land in the valley between the north and south boundaries of the Alameda grant that this bears upon the solution of the question in issue here. The answer is First, We have not sought to establish a title to any of the Alameda Grant land other than to



those lands claimed by the interveners. Second, The Findings of Fact do not exclude a possibility that there may be claimants to those alleged portions of the valley land and who may have deeds of title thereto. Third, If the fact be that there are strips of land apparently unoccupied in the valley, this tends to confirm that those persons claiming to be heirs of Juan Gonzales and whom it is alleged have lived and are living in said grant, had knowledge that the interveners and their predecessors in right and title claimed their respective strips of land westerly from the valley to the limits of the grant. This all bears upon the question of notice to the alleged heirs of Captain Juan Gonzales living on the grant and it would be destructive to property rights to declare that after such long possession by interveners of the property included within their respective deeds that any alleged heir could assert title by action at law or equity and disturb and overthrow interveners' possession. If the contention of appellants as to the mesa lands be sound, that interveners had no possession thereof only in common with the descendants of Captain Juan Gonzales living on the grant, and could maintain such contention in opposition to the possession of interveners, then such claim might be successfully asserted in behalf of such descendants of Captain Juan Gonzales to the valley land, and we are not sure but that the effort will be made later to assail the rights of the interveners to their property east of



the foothills and within the boundaries of the grant.

"Title to lands, by adverse enjoyment, owes its origin to, and is predicated upon, the statute of Limitations, and although the statute does not profess to take an estate from one man and give it to another, it extinguishes the claim of the former owner and quiets the possession of the actual occupant, who proves that he has occupied the premises under a color of title, peaceable and quietly for a period prescribed by law.

The Statute of Limitations, therefore, may properly be referred to as a source of title and is really and truly as valid and effectual as a grant from the sovereign power of the state."

*Tyler on Ejectment and Adverse Enjoyment, page 88.*

"The courts have concurred, it is believed, without an exception in defining 'color of title to be that which in appearance is title, but which in reality is no title.' They have equally concurred in attaching no exclusive or peculiar character or importance to the ground of the invalidity of an apparent or colorable title; the inquiry with them has been, whether there was an apparent or colorable title, under which an entry or claim has been made in good faith. The authorities seem to be conclusive to the point, that a claim to property, under conveyance, however inadequate to carry the

true title to such property, and however incompetent might have been the power of the grantor in such conveyance to pass a title to the subject thereof, yet a claim asserted under the provision of such a deed is strictly a claim under color of title, and one which will draw to the possession of the grantee the protection of the statute of limitations, other requisites of those statutes being complied with. This subject was somewhat recently before the Supreme Court of the United States, and the former decisions of that court upon the question were elaborately examined, and the conclusion was declared in accordance with these views, and it was decided that what is color of title is matter of law, and when the facts exhibiting the title are shown, the court will determine whether they amount to color of title. But good faith in the party, in claiming under such color, is a question of fact for the jury."

*Tyler on Ejectment and Adverse Enjoyment*, pages 872 and 873, citing *Wright vs. Mattison*, 18 Howard (U. S.) 50; *Lea vs. Polk County Copper Co.* 21 How. 493; *Wales vs. Smith*, 19 Ga. 8.

*Dickinson vs. Breedon*, 30 Ill. 279.  
*Hanna vs. Renfro*, 32 Miss. 125.

In *Wright vs. Mattison*, (supra), the court says:

"We deem it unnecessary to examine in detail the numerous decisions adduced in the argument for the plaintiff in error, to define and establish the meaning of the

phrase, 'color of title.' The courts have concurred it is believed without an exception in defining 'color of title' to be that which in appearance is title, but which in reality is no title. They have equally concurred in attaching no exclusive or peculiar character or importance to the ground of the invalidity of an apparent or a colorable title; the inquiry with them has been whether there was an apparent or colorable title, under which an entry or a claim has been made in good faith."

In *Lea vs. Polk County Copper Co.* (*supra*) a part of the syllabus is:

"Where a person was in possession, this was sufficient notice to a claimant of an adverse title; and whether the deed under which this person claimed, was registered or not was of no importance to the claimant. The act of limitations of the State of Tennessee protects persons in possession of land under the following circumstances: 'First, they must have had seven years possession of land granted by the state; second, they must have held or claimed the land by virtue of a deed of conveyance, or other assurance, purporting to convey an estate in fee simple; third, no claim by suit in law or equity, effectually prosecuted should have been set up or made to said lands within that time.' Under the second head, an unregistered deed is sufficient to constitute the bar. The deed, when recorded, related back to its date.

"The possession of several persons in succession, claiming under the same title was the same possession; and the evidence shows that the persons claiming under the statutes were in possession for the required period of time."

The doctrine laid down in *Wright vs. Mattison*, has been approved and followed in the same court and state courts as shown in notes of U. S. Reports Vol. V, pages 526, 527, and 528, Rose's Notes on U. S. Reports.

In *Dickinson vs. Breedon* (supra), a portion of the syllabus is that:

"Any deed purporting on its face to convey title, no matter on what it may be founded, is 'color of title.' The deed in itself purports good faith. Unless facts and circumstances attending its execution show that the party accepting it had no faith or confidence in it."

"Where one having no title conveys to a third person, who enters under the conveyance, the law holds him to be a dis-sessor."

*Bradstreet vs. Huntington*, 5 Peters (U. S.) 402.

"On the next motion, the only question presented is on the legal sufficiency of the evidence to make out an ouster of a legal seisin and possession of Williams by the defendant; and a continued adverse possession for twenty-one years before suit brought. An entry by one man on

the land of another, is an ouster of the legal possession arising from the title, or not, according to the intention with which it is done; if made under claim and color of right, it is an ouster, otherwise, it is a mere trespass; in legal language, the intention guides the entry and fixes its character. That the evidence in this case justified the jury in finding an entry by the defendant on this lot, as early as 1804 can not be doubted; nor that he claimed the exclusive right to it, under color of title, from that until suit brought. There was abundant evidence of the intention with which the first entry was made, as well as of the subsequent acts related by the witnesses, to justify a finding that they were in assertion of a right in himself; so that the only inquiry is as to the nature of the possession kept up. It is well settled, that to constitute an adverse possession, there need not be a fence, building or other improvement made (10 Peters 442); it suffices for this purpose, that visible and notorious acts of ownership are exercised over the premises in controversy, for twenty-one years, after an entry under claim and color of title. So much depends on the nature and situation of the property, the uses to which it can be applied, or to which the owner or claimant may choose to apply it, that it is difficult to lay down any precise rule, adapted to all cases, but it may with safety be said, that where acts of ownership have been done upon land, which, from their nature, indicates a notorious claim of property in it, and are continued for twenty-one years, with a knowledge of an adverse claimant,



without interruption or an adverse entry by him, for twenty-one years, such acts are evidence of an ouster of a former owner and an actual adverse possession against him, if the jury shall think, that the property was not susceptible of a more strict or definite possession, than had been so taken and held. Neither actual occupation, cultivation nor residence, are necessary to constitute actual possession (6 Peters 513), when the property is so situated as not to admit of any permanent useful improvement, and the continued claim of the party has been evidenced by public acts of ownership, such as he would exercise over property which he claims in his own right and would not exercise over property which he did not claim. Whether this was the situation of the lot in question, or such was the nature of the acts done, was the peculiar province of the jury; the evidence, in our opinion, was legally sufficient to draw the inference that such were the facts of the case, and if found specially, would have entitled the defendant to the judgment of the court in his favor; they, of course, did not err in refusing to instruct the jury that the evidence was not sufficient to make out an adverse possession."

*Ewing vs. Burnett*, 11 Peters (U. S.) 51-52.

"The doctrine cited from *Ewing vs. Burnett* (supra) has been repeatedly used as authority in the same court and in many state courts and has never been successfully questioned or overthrown."

*Vol. III Rose's Notes on the U. S. Supreme Court's Court Reports, pages 637 to 643.*

"Local customs universally understood for years are binding."

*Strother vs. Lucas, 12 Peters (U. S.) 437.*

"The assumption that there can be no possession to defeat an adverse title, except in one or other of these ways, that is, by an actual residence, or an actual inclosure, is a doctrine wholly irreconcilable with principle and authority; nothing can be more clear, than that a fence is not indispensable to constitute possession of a tract of land; the erection of a fence is nothing more than an act presumptive of an intention to assert an ownership and possession over the property. But there are many other acts, which are equally evincive of such an intention of asserting such ownership and possession; such is entering upon land and making improvements thereon; raising a crop of corn; felling and selling of trees thereon, under color of title. An entry into possession of a tract of land, under a deed containing specific meets and bounds, gives a constructive possession of the whole tract, if not in any adverse possession; although there may be no fence or inclosure round the ambit of the tract, and an actual residence only on a part of it. To constitute actual possession it is not necessary, that there should be any fence or enclosure of the land. Where there

has been an entry on land, under color of title by deed, the possession is deemed to extend to the bounds of that deed; although the actual settlement and improvement were on a small parcel only of the tract. In such a case, where there is no adverse possession, the law construes the entry to be coextensive with the grant to the party; upon the ground, that it is his clear intention to assert such possession. The demandants in a writ of right claimed adversely to all the tenants, upon a title independent and distinct from theirs; the tenants all claimed under an adverse title, by deed of seven thousand acres; that is, under a title common to them all. The demandants could not recover any tract in controversy, unless they were seized thereof, within thirty years, the period prescribed by the statute of Limitations for writs of right; if, therefore, there had been thirty years' adverse possession of the particular tract in controversy, by any of the tenants the demandants failed in their suit, and were debarred from any recovery. The court instructed the jury, that if they should find, that the patent for the land, under which the title of the tenants was derived did not cover all the land; yet, if they find from the evidence, that the tenants or any of them, or those claiming under them, had had possession of the land in contest, for thirty years next before the commencement of the demandants' suit, they must find for the tenants."

*Ellicott vs. Pearl*, 10 Peters U. S. 413.  
(9:475.)

The doctrine stated in *Ellicott vs. Pearl*, supra, is an old doctrine thoroughly supported by authority and followed universally in this Court and the state courts, as shown by the citations in Vol. III, Rose's Notes on United States Supreme Court Reports, pages 592, 593 and 594.

Appellants' attorney in his brief at page 27 admits that such is the rule in ordinary cases that "where one is in actual possession of a portion of the tract under color of title, his possession will be presumed to extend by construction to the limits of the land described in his deed." But contends "that while this rule would ordinarily apply where there is no conflict of possession, it does not apply to a case of this kind, for the reason that many heirs of Captain Juan Gonzales have always lived upon this grant, and that the title of Captain Juan Gonzales and his heirs being perfect, the possession of any tenant in common is possession of all and that such possession extends to the boundaries of the grant under such perfect title, except as to such tracts are in the actual adverse and exclusive possession of some other person." The question of actual possession in this case has been passed upon by the trial court in its Findings of Fact, and such Findings of Fact are conclusive upon an appellate court. While the trial court has found that many heirs of Captain Juan Gonzales *have always lived upon this grant* it has qualified such Finding in the most complete way possible, showing conclusively that the *pedis possessio* so far as it affects



the several strips claimed by the interveners, was in the interveners at all times and has never been in the heirs of Captain Juan Gonzales, the heirs of Captain Juan Gonzales living in the grant only actually occupying the valley land in the strips which they claimed and held under deeds and devises purporting to convey an estate in fee simple and at no time had there been any assertion of possession or claim as to any strip or any land within the Alameda Land Grant outside of the strips so claimed and held by them under deeds and devises until long after the institution of this suit or proceeding, when A. B. McMillen, the attorney for appellants and a party in this case, obtained the deeds from Juan Antonio Rodarte and Merced Gonzales de Romero and Fabiana Gonzales. (See Finding LXXXIII, Page 96.) As to the legal effect of these deeds reference will hereafter be made.

"The presumption of amicable relation between tenants in common is merely a rule of evidence, liable to be overcome by the circumstances of any particular case involving the question whether in fact the possession was adverse, and it is not a rule of law denying the application of the statute of Limitations to persons sustaining the relation of tenants in common."

1 *Enc. of Ev.*, pages 685, 686.

"In the acquisition of title by adverse possession the distinction between strang-



ers and tenants in common relates to the character of the evidence necessary to prove that the possession was adverse."

*Foulke vs. Bond*, 45 N. J. Law 527.

"The acts of an occupant may create such notorious evidence of his adverse claim as to render it unnecessary to show either positive notice to a co-tenant, or facts showing actual knowledge on his part."

*Elder vs. McClaskey*, 74 Fed. 581.

*Packard vs. Johnson*, 57 Cal. 180.

*Dugan vs. Follett*, 100 Ill. 581.

*Sullivan vs. Holmes*, 8 Cush. 252.

"The exclusive possession and in severalty by co-parceners of the various parts of the common land, acquiesced in for a great number of years will authorize an inference of parole partition unless other circumstances rebut such presumption."

*Enc. of Ev. Vol. 1, page 690.*

*Berry vs. Seawell*, 65 Fed. 742.

"We think that, in the absence of evidence to the contrary, the fact that co-tenants of a tract of land have occupied the several portions in severalty for more than fifty years, with the knowledge and consent of each other, and have exercised exclusive ownership and control over their respective shares, without objection or claim on the part of the other co-tenants, raises a strong presumption of fact that there was a mutual division by agreement, express or tacit, of the land, between the co-tenants according to the

line of exclusive occupancy."

*Allen vs. Seawell*, 70 Fed. 561.

The area of intervenors' possession was coextensive with the land as described in their several deeds and assurances.

"Adverse possession is not limited to the land actually possessed, but extends to the entire tract described in the deed."

*Campbell vs. Bates*, 143 Ala. 338.

"Where possession of twenty acres of a quarter section of land, conveyed by a donation deed, was taken by the grantees and their successors, their possession was constructively coextensive with the quarter section."

*Connerly vs. Dickinson*, Ark. 99 S. W. 82.

"Actual possession of a part of a tract, under a donation deed describing the whole and based on a forfeiture for taxes, carries constructive adverse possession to the limits of the boundary described."

*Rucker vs. Dickson*, Ark. 93 S. W. Rep. 750.

The case last cited refers to other two cases in Arkansas both of which sustain the doctrine of the text.

"Possession of parts of a tract of land, divided by imaginary lines only, with title to part and usufruct of the rest carries with it possession of the whole."

*George vs. Cole*, 109 La. p. 816.

"When one enters on a body of land under color of title, the actual possession of a part is the possession of the whole, except such parts as are in actual possession of others."

*Santee River Company vs. James, S. C.*  
50 Fed. Rep. 360.

"Actual possession by the grantee in a deed of a part of the land conveyed gives constructive possession to the extent of the boundaries of the deed."

*Peden vs. Crenshaw, Court of Civil Appeals, Tex.* 81 S. W. 369.

"Where a deed was executed in 1887 record of it was not necessary in order for it to operate as color of title, so that possession of a part of the tract of land covered by it would extend constructively to the limits of the lot or known tract described in it."

(Citing *Robertson vs. Dowling Co.*, 48 S. E. 429; *Ga.* 833.)

*O'Brien vs. Fletcher, Ga.* 51 S. E. 405.

"Where a person enters upon land under a deed purporting to convey a certain boundary, and actually occupies a portion of the tract, his adverse possession extends to the boundaries, without his fencing or cultivating the whole.

*Van Gunden vs. Virginia Coal & Iron Co.*, 52 Fed. 838.

"Possession under color of title is in law possession of all the land described

in the deed conferring such color of title lying in the same tract." (Maine; 1861)

*Bracket vs. Person Unknown*, 53 Me. 228.

(Miss.; 1877) *Green vs. Irving*, 54 Miss. 450, 28 Am. Rep 360.

(N. H.; 1858) *Little vs. Downing*, 37 N. H. 355.

"One who enters on land under color of title by deed has actual possession to the extent of the boundaries therein described, though the title be otherwise defective."

*Black vs. Tennessee Coal, Iron and R. R. Co.*, 93 Ala. 109.

"On the question of adverse possession where the protection of the Statute of Limitations is invoked, actual possession of a part is legal possession of the whole of a tract covered by the title under which actual possession is taken, and that possession of a part will impart notice of claim to the whole tract."

*Waters vs. Connelly*, 59 Ia. 217.

"Where a person claiming title to a tract of 2029 acres has enclosed 200 acres of the land within an enclosure containing about 3500 acres, on part of which he resides, he has constructive possession of the entire tract."

*Talliaferro vs. Butler*, 77 Tex. 578.

"Evidence of an actual or visible possession of land under a deed inconsistent with the claims of all others supports a plea of limitation as to all the land com-

prehended in the deed, though only a part of it is occupied, and though the claimant does not actually reside on any part of the land."

*Hodges vs. Ross*, 6 Tex. Civ. App. 437.

"The enclosure and use of part of the tract are sufficient to sustain an adverse claim to the entire tract, under the five years' statute."

*Brown vs. O'Brien*, Tex. Ct. of Civ. App. 33 S. W. 267.

"Possession of a portion of a lot of land, claiming the whole, gives color of possession which, in construction of law, is possession itself."

*Swift vs. Gage*, 26 Vt. 224.

The foregoing authorities cited upon the question of area of possession are based upon statutes very much weaker than Section 2937, Compiled Laws of New Mexico, 1897.

The intervenors acquired their land by purchase or by inheritance or both. The deeds of intervenors described with accuracy the boundaries of their several possessions. The heirs of Juan Gonzales must have known the uninterrupted course of the description and the boundaries of the numerous tracts conveyed by the deeds for upwards of fifty years and having such knowledge with the acts of ownership which led to the finding must have resulted in knowledge to such heirs that the intervenors and their predecessors in title claimed the land and were in possession of such lands as de-



scribed in their respective deeds. The appellants did not offer proof that any heir of Juan Gonzales or any alleged co-tenant was without knowledge of the claim of the interveners and their predecessors.

The exception made in Finding LXXXIII, page 96, as to the deeds obtained by A. B. McMillen from Juan Antonio Rodarte and Merced Gonzales de Romero and Fabiana Gonzales in no way modify the said finding, inasmuch as the said deeds were obtained long after the suit or proceeding was instituted, and while it was pending. The rule in such case being "pending the suit nothing should be changed."

25 Cyc. 1449.

It has been held that a purchase made by "an attorney of his client's interest *pendente lite* is not even a bona fide purchase for value." Gay vs. Parpart, 106 U. S. 679, 699. 27 Law Ed. 256.

An unregistered deed is sufficient to constitute the bar of the Statute of Limitations.

*Lea vs. Polk County Copper Company*, 21 Howard (U. S.) 493.

*Packard vs. Moss*, 68 Cal. 128; 8 Pac. 821.

*Chastain vs. Phillips*, 11 Ired. 255.

*Hardin vs. Barrett*, 6 Jones 159.

*Krow vs. Hinson*, 8 Id. 347.

*Rawson vs. Fox*, 65 Ill. 200.

*Bellows vs. Jewell*, 16 N. H. 420.

*Minot vs. Brooks*, 16 N. H. 374.

*Dickinson vs. Greedon*, 30 Ill. 279.

Registration or record of a deed is not essential to give the color of title in cases where constructive possession of the whole of a tract of land is claimed by reason of actual possession or part thereof.

*Dorlan vs. Westervitch*, 140 Ala. 283.

*Packard vs. Moss*, 68 Cal. 123.

*Dickenson vs. Breeden*, 30 Ill., 279.

*Rawson vs. Fox*, 65 Ill., 200.

*Hanna vs. Renfro*, 32 Miss. 125.

*Plaster vs. Grabell*, 160 Mo. 669.

*Minot vs. Brooks*, 16 N. H. 374.

*Jaques vs. Lester*, 118 Ill., 246.

*Lea vs. Polk County Copper Co.*, 21 Howard, U. S. 493.

Counsel for appellants on pages 59, 65 and 71 of his brief argues that the partition of this grant is a matter of necessity and of very great public importance. We believe that such argument is conclusively destroyed by an inspection of the transcript. It is not established in the Findings that many heirs of Captain Juan Gonzales are now living upon the grant or have lived upon the same for years. Finding LXXXII is the only expression of the court, and not withstanding the

persistent efforts made in this case to trace and create genealogy, the appellants have set forth in the Finding all of the alleged heirs of Captain Juan Gonzales living on the grant who have been discovered by the proofs in the cause, and which proofs were put in the case before the intervention as is apparent from the interlocutory decree. On the other hand over seventy interveners with their families live upon this grant, and earn their living in caring for their property and performing their domestic exchanges in the community. It is apparent from the names that nearly all of the interveners are of Spanish descent. The court will take judicial notice that the larger part of the grant, in fact all of it but a few thousand acres and all of that part which was and is settled, is situate in the County of Sandoval. This is true of the settlement of Corrales or Sandoval. The civil society that has been maintained in the settlement upon the grant has been so maintained by the interveners. The genealogical tree attached to the interlocutory decree it is safe to say contains the names of innumerable people whom we believe never saw the grant and whom we further believe never had knowledge that they had any supposed interest in it whatever. The interveners were not permitted to attack the genealogy which, as we have already stated, was in the case at the time of the intervention. Should the title to the interveners to the property described in their deeds and assurances be overthrown, then,

indeed, it could be said that action so revolutionary to justice and foreign to all sense of right, was "a delusion and a snare" set in their judicial system as a trap to be sprung upon the innocent and unsuspecting. Appellants' counsel on page 60 of his brief intimates that the interveners acquired their property without purchase. This statement is not sustained by the Findings of the court. The title of interveners is based upon deeds of conveyance, and other instruments equally as sacred. The decision of the district and supreme courts if upheld will not bring disaster. The dire results of wrong and woe pictured by the appellants' counsel will never come. Such results, however, would inevitably follow the destruction of a statute so just in its provisions and called into existence by a necessity which moved the law-makers of the Territory within ten years after its acquisition by the United States. *The interests of the interveners were not acquired by a few strokes of the pen.* They seek nothing other than what the law secures to them. They must take the law as they find it and they ask the court to interpret it as made. Counsel argues that it is a trait of character of the Spanish people to cultivate only small patches of land, and to use larger adjacent portions in common with others for the purpose of pasturing their stock. Such portions, however, in this case belonged to the interveners severally under their respective deeds and by their acts of

possession, and when interveners permit without objection the domestic animals of their neighbors to pasture upon their several lands, this act of generous assimilation should not be invoked to destroy their rights. By so doing the interveners were not violating any rule of law or of propriety.

Counsel for appellants makes the statement that "every one familiar with the condition in New Mexico knows that in these large unenclosed grants such a thing as adverse possession except as to small farming tracts does not exist anywhere. It is entirely foreign to the ideas of the native people." And then he contends that the native people possess only such lands as are needed for farming purposes and that pasture or common lands are open to the use of all jointly. The opposite of this deduction is the fact. When the native people settled in New Mexico the domain was over run by hostile Indians, and the native population for safety was compelled to establish their homes in pueblitos or villages where the aggregate population could gather quickly for the purposes of defense against the sudden incursions of raiding bands of savages. Their farming lands were outside of the settlement, and these lands they tilled and cultivated by day and retired to their homes in the settlements at night. No narratives arouse more interest in the listener than the recitals of the native people of the hardships they endured during those trying years. Many men and women are now living who recount the



perils which menaced them in sustaining civilization in their valleys and upon their plains, in their mountain passes and canyons and upon their prairies. It was a hard necessity that compelled them to cultivate their lands and pasture their flocks and herds at a considerable distance from their homes. This is not tradition only but a startling reality within the memory of the living.

It is much the better public policy and the expression of law as well to decree these lands in the possession and enjoyment of the interveners than to pass them over to the grasp of a few individuals and incorporated companies who when armed, with the process of the courts will cause these inoffensive and innocent people to move from their homes. For more than a century these settlers and their descendents have maintained their schools, their churches, their roads, their bridges and they have well performed all the functions devolving upon civilized society. This statement is not made with the purpose of clouding the issue or of urging a departure from the true course of the law and which must decide the controversy, but it is made to illustrate the reason for the enactment of the statute, whose meaning we must learn. The law making power of the Territory had in mind, when it enacted this statute, that time would develop movements to disturb the early settlers and their descendants in their possessions. It was anticipated then as it has been demonstrated since that entire villages would be de-

populated by a modern legal machinery to establish geneology and partition the substance of their long acquired and inherited possessions.

It is too true that this fear which we believe to have been the moving spring for the enactment of the legislation under discussion now, has not been entirely overcome by the aptness and precision in the language of the statute whose object was the erection of a barrier against intrusion in the homes of the native settlers and to prevent the destruction of their agricultural pursuits.. Their rights have been invaded and eclipsed under the forms of law. Actions have been instituted under titles as general and all embracing as is the title of the action at bar. In spite of the fact that the appellants declare that there are 458 descendants of Captain Juan Gonzales not one was named in the title of the action originally as a defendant. The appellants desire to make much of Finding LXXXII wherein the court found that Captain Juan Gonzales lived upon the Alameda Grant and that there have always been a large number of his heirs living within the boundaries of the grant. And twenty persons are named in the finding, all bearing the name of Gonzales but one and it is most significant that one of the interveners Candido G. Gonzales recognizes the rights of his co-intervenors in this case; and also knows by his observation and experience that the western limit of the boundaries of the lands of such intervenors is the ceja of the Rio Puerco.

Another reason the legislature of the Territory had in mind when it enacted this legislation, is the fact that when these immense land grants were handed out by the imperial power, the lands selected were always of that part of the country best adapted to moisture from the overflow of rivers, arroyos and streams. The most fertile soil was chosen for these gratuities. As a rule the donee made no effort whatever to cultivate the lands, much less to induce settlement upon them. The pioneer found this vast domain vacant and unexplored. He made use of the talent the slothful man buried in the earth. Homes were made upon these lands. These homes have been in the possession of the interveners for years, and the legislature of the Territory did no more than that which had been previously done by the legislatures of other states.

As the conditions here were unlike those of any other community, the legislation enacted as matter of course, was to meet the conditions and remove the dangers.

The interveners are all stock raisers in a small way. They have sheep, cattle and horses. These animals live upon the mesa lands of the interveners. Remove this support from them and their valley lands are worthless.

Another consideration of much significance is to be found in Finding LXXXIII. The interveners have presented a large number of deeds of conveyance, all of which give as the western bound-

dary of their possessions the ceja of the Rio Puerco. Notwithstanding the claim of appellants that a large number of the heirs of Captain Juan Gonzales have always lived within the boundaries of the grant; but two deeds of undivided parts of the grant are presented in this case. One bearing date January 8th, 1907, and one bearing date February 27th, 1907. Both executed to A. B. McMillen. These deeds were made long after the institution of this case.

### III.

The Supreme Court of the Territory committed no error in the apportionment of costs, as between the appellants and the two unsuccessful appellees. This action of the court is challenged in the fourth assignment of error.

Appellants' counsel cites the case of *King vs. Tabor*, reported 15 New Mexico 494.

The decision in the case cited was made in an action at law and is not applicable to the decision of the court upon the award of costs in the case at bar. The court in *King vs. Tabor* confines its decision to actions at law and expressly so states. Partition partakes of the nature of an action in equity. The same judges who decided the case of *King vs. Taber*, decided the question of costs in this case, and at the same term.

In an action in which the parties are so numerous it would seem just to apportion the costs among the unsuccessful litigants. Appellants'

counsel claims that there are 458 appellants. In this number he includes many of the interveners who have repudiated the partition as prayed for in behalf of the plaintiff. Suffice to say that the taxation of costs is a matter of procedure and the decision of the Supreme Tribunal of the jurisdiction construing its own statute upon such taxation should be regarded as final.

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#### IV.

#### SECTION 2937 DOES NOT VIOLATE ANY OF THE PROVISIONS OF THE CONSTITUTION OF THE UNITED STATES.

Section 2937, Compiled Laws of New Mexico, 1897, is not in violation of either Article Five, or Article Fourteen of the Amendments to the Constitution of the United States. Article Fourteen was not made a part of the Constitution of the United States until many years after the enactment of Section 2937, and an inspection of the record before this court will show conclusively that a large number of owners of the lands in controversy acquired their titles long prior to the adoption of Article Fourteen of the Constitution of the United States. We believe that in a majority of instances, the titles were acquired either by the present interveners or their grantors in title prior to the adoption of Article Fourteen and in quite all of the cases the title of the interveners is directly traceable to grantors and predecessors in title and possession who held such lands,



under written evidence of title, before the adoption of the amendment in question.

Even though it be held that Article Fourteen is applicable to the interveners, whose title was acquired prior to its adoption, we contend that Section 2937 does not conflict therewith.

It has been held by high authority that Article Fourteen was undoubtedly proposed for the purpose of fully protecting the newly made citizens of the African race in the enjoyment of their freedom and to prevent discriminating state legislation against them. "San Mateo County vs. Southern Pacific Railroad Company, 13 Fed. Rep. 722."

In the case cited, Justice Field says:

"This (referring to the object of the amendment) is manifest from the discussions in Congress with reference to it. There was no diversity of opinion as to its object between those who favored and those who opposed its adoption."

"A state may classify the objects of legislation so long as its attempt at classification is not merely arbitrary and unreasonable."

*Clark, et al., vs. City of Kansas City, Kan., 176 U. S. 114.*

*Cooley's Constitutional Limitations, 7th Edition, pages 14, 15, 16, 17 and 18.*

The foot note to the discussion by Mr. Cooley of Amendment 14, clearly shows that states may

classify legislation relative to the same subject matter and that such classification is not within the condemnation of the amendment. The classification extends over a wide variety of legislation and especially as to business pursuits and occupations and also as to procedure in the administration of justice as to personal rights.

In the case at bar there is a very wide distinction as to land held under grants from the governments of Mexico and Spain and other government lands of a public character acquired in this domain and the lands of private owners.

We will not attempt here to point out this distinction as the line of demarkation is too manifest.

Mr. Cooley further comments upon Amendment 14, beginning at page 567, of the volume cited, and enforces his argument with elaborate foot notes citing cases in state and territorial jurisdictions as well as in the Supreme Court of the United States.

“In Virginia a distinction is made between lands lying on the east side of the Allegheny Mountains and those upon the west side. As to the former, fifteen years possession is required; as to the latter, only ten years possession is necessary. In some of the states a distinction is made as to the quality of the estate acquired, where the occupant enters and holds under color of title and where he merely holds by naked possession. So,

too, in several states a distinction is made between the character of occupancy required in the two cases."

*Sec. 254, page 567, Wood on Limitations, 3rd Edition.*

Sec. 2937 is not in violation of that provision of the United States Constitution forbidding the enactment of statutes impairing the obligation of contracts.

*Wheeler vs. Jackson, 137 U. S., page 245.*

In the case cited, the court says:

"What has been said is sufficient to dispose of the additional suggestion to the effect that the cancellation of the record of sales at which the plaintiff purchased deprived him of his property without due process of law, in violation of the fourteenth amendment. He asserts a proprietary right in such record for what it was worth. But if the observations made by us in respect to the first point, be sound, he had no such right after permitting the period to elapse within which he could bring suit to compel the execution of a conveyance or a lease. A statute of limitations cannot be said to impair the obligation of the contract, or to deprive one of property without due process of law unless in its application to an existing line of action, it unreasonably limits the opportunity to enforce that right by suit."

In *McGahey vs. the State of Virginia*, 135 U. S., beginning at page 662, the court says:

"No rule as to the length of time which will be deemed reasonable, can be laid down for the government of all cases alike. Different circumstances will often require a different rule. What would be reasonable in one class of cases would be entirely unreasonable in another."

The reasoning of the court is applicable to the case at bar. The circumstances which would confer title in the case of adverse possession to the lands included within the limits of a land grant and invest title to those who held and occupied the same pursuant to deeds of conveyance or other assurances, might be regarded and could be regarded by the law-making power as entirely unlike the circumstances of land held in private ownership and not included within the limits of a grant. The quantity of lands in private ownership and those held in virtue of the grant might be regarded as an important distinction by the legislative power in establishing a rule of adverse possession. The fact that the grants within this domain were largely held by non-residents of our country and especially by people who were hostile to the separation of New Mexico from the mother country, might also be one of the reasons moving the law-making power to recognize this distinction. Also the fact and of which the court can take judicial notice, that large numbers of

people amounting to entire districts, had settled upon these grant lands, had cultivated them, protected them, paid taxes upon them, had interchanged them one with the other, had made deeds of conveyance, and had bequeathed them to their heirs; all of these considerations, as well as others, are to be considered in determining the legislative mind at the time of the enactment of Sec. 2937, C. L. 1897.

Section 2938 was enacted at the same time, and forms a part of the same legislation on this subject. The period of limitation prescribed in Section 2938, to-wit, ten years, is the same as in Section 2937. The distinction noticeable is as to the character of possession and this distinction is but slight as by Section 2937 the possession of lands is denominated to be of those lands described in the deeds of conveyance and other assurances of title of the person owning, possessing and occupying the same.

Section 2938 confers title upon a person holding adversely lands for ten years without reference to the right of such person acquired by color of title. Adverse possession, as it is denominated in the law, being sufficient to invest title or to suspend the remedy of the owner to recover such lands.

This court has upheld Section 2938 as a valid exercise of legislative power.

*Probst vs. Trustees of the Board of Do-*



*mestic Missions*, 129 U. S., 182.

“The statute of limitations fairly operating on the remedy is not repugnant to this clause (due process of law) nor to the one forbidding a state to pass any law impairing the obligation of contracts.”

*Tucker on Constitution*, Vol. 2, Sec. 390  
*Wheeler vs. Jackson*, *supra*.

“It has been generally held that one of the earliest modes known to mankind for the appropriation of anything tangible to the use of one and to the exclusion of all others, is possession and that it has been always a recognized legal mode of acquiring title. And it has been equally held, that,

“The English and American statutes of limitation have in many cases the same effect and if there is any conflict of decisions on the subject, the weight of authority is in favor of the proposition that where one has had the peaceable, undisturbed possession of real or personal property, with an assertion of his ownership, for the period which under the law would bar an action for its recovery by the real owner, the former has acquired a good title; a title superior to that of the latter, whose neglect to avail himself of his rights has lost him his title.”

This doctrine has been repeatedly asserted by this court.

*Campbell vs. Holt*, 115 U. S. 620.

*Laffinwell vs. Warren*, 67 U. S. 599.

*Croxall vs. Sherrerd*, 72 U. S. 268.

*Dickerson vs. Cosgrove*, 100 U. S. 578.

*Bicknell vs. Camstock*, 113 U. S. 149.

Title to land acquired by means such as are prescribed under the statute in question, Secs. 2937 and 2938, has always been held of such validity that the repeal of the statute has been conceded and decided to amount to the taking of property from the person who acquired title to his land in controvention of Article 5 of the Amendments to the Constitution of the United States.

A person who has thus acquired title has a vested interest in the land covered by his deeds and other assurances of title and is protected by the said constitutional clause.

*Campbell vs. Holt*, *supra*.

*Baker vs. Upwood*, 10 L. R. A. 387.

*Orman vs. Van Arsdell*, 12 New Mex., 349.

In the case of *Campbell vs. Holt*, *supra*, this court held that:

“In an action to recover real or personal property, where the question is as to the removal of the bar of the statute of limitations, by a legislative act passed after the bar has become perfect, such act deprives the party of his property with-

out due process of law. The reason is, that by the law in existence before the repealing act the property had become the defendant's. Both the legal and the real ownership had become vested in him and to give the act the effect of transferring this title to plaintiff, would be to deprive him of his property without due process of law."

As to the contention of appellants' counsel that a most unfortunate state of affairs is created relative to the titles of real estate in the commonwealth of New Mexico in that its Supreme Court has applied one rule for property outside of land grants and another rule for property rights within land grants, it can be plainly seen that even if such be the case, it is not in controvention of any clause of the United States Constitution, as a reasonable opportunity is given by the statute in question to any claimant of superior title to establish his title in the courts.

We assert, and it is a question of which the court may well take judicial notice, that statutes of limitation affecting real estate throughout the United States, usually prescribe a ten years' period.

Counsel for appellants contends that a person having no title whatever could, by the execution of a conveyance, confer title upon a grantee by such conveyance, provided such grantee remained in possession of the land for the period required in Section 2937. This question has been repeated-

ly adjudicated by courts and it is held that a person who enters into possession of lands under a conveyance, although the person so conveying, has not title thereto, is presumed to enter according to the description in the deed; and his occupancy of a part claiming the whole is construed as a possession of the entire tract.

*Colman vs. Billings*, 89 Ill. 183.

*Fisher vs. Bennehoff*, 121 Ill. 426.

*Kruse vs. Wilson*, 79 Ill. 233.

*Hamilton vs. Boggess*, 63 Mo. 233.

*Mason vs. Ayers*, 73 Ill. 121.

Rights asquired by adverse possession are the creatures of statute. The legislature has the undoubted power of prescribing the terms and conditions of an adverse holding. It can determine the extent to which the possession of one tenant in common inures to the benefit of his co-tenant in common. It can define to what extent the possession of one tenant in common will uphold the character of such possession in large tracts of land. As its power is over the whole subject it can prescribe the extent of possession of a disseisor as against a co-tenant owner. The legislature of New Mexico has done this, and in so doing has exercised a power not in conflict with any constitutional inhibition.

Counsel for appellants has cited a number of cases by which the effort is made to show that

Section 2937 is not an act of limitation. Quite all of the cases cited are tax cases, in which there was no original entry and possession. Much is made of the case of *Gittings vs. Sterns*, 19 Ill. 380. He quotes at large the second section of the act of the legislature of Illinois, entitled, "An Act to Quiet Possessions and Confirm Titles to Lands."

The second section is as follows, to-wit:

"Hereafter, whenever any person having color of title, made in good faith, to vacant and unoccupied land, shall, after the passage of this act, pay all taxes legally assessed thereon, for seven successive years, he or she shall be deemed and adjudged the legal owner of said vacant and unoccupied land, to the extent and according to the purport of his or her paper title."

He omits to cite the first section of the same act which is as follows:

"That hereafter, every person in the actual possession of land or tenements, under claim or color of title made in good faith, and who shall, for seven successive years after the passage of this act, continue in such possession, and shall also, during said time, pay all taxes legally assessed on such land or tenements, shall be held and adjudged the legal owner of such land or tenements, to the extent and according to the purport of his or her paper title."



As to this first section, the court says: "The first section of this act notwithstanding the language used, has been uniformly treated by this court as a limitation law—a law barring the remedy," citing *Irving vs. Brownell*, 11 Ill. R. 402; *Woodard vs. Blanchard*, 16 Ill. R. 424; *McConnel vs. Street*, 17 Ill. R. 253; *McClellan vs. Kellogg*, *Ibid.* 488.

The words of limitation of the act cited are not as strong and comprehensive as in Section 2937. That part of Section which declares 2937 "that the person or persons, their children, heirs or assigns so holding or keeping possession as aforesaid by the term of ten years, shall have a good and indefeasible title in fee simple to such lands, tenements or hereditaments." How holding possession? The statute answers: "*Such quantity of lands as shall be specified and described in his, her or their deed of conveyance, devise, grant or other assurance, as aforesaid, in preference to all and against all and all manner of person or persons whatsoever; and any person or persons, their children or their heirs, or assigns who shall neglect or who have neglected for the said term of ten years, to avail themselves of the benefit of any title, legal or equitable which he, she or they may have had to any lands, tenements or hereditaments within this territory by suit of law or equity effectually prosecuted against the person or persons so, as aforesaid, in possession shall be forever barred.*"

The same words of limitation appear earlier in Section 2937. There is also a proviso added to the section excepting from its operation, all persons who may be entitled to prosecute who are under disability and additional time is given to such persons to institute suits for the protection of their rights. It seems idle argument against the contention that Section 2937 is not an act of limitation. It was conceived for such purpose and its terms effectually exclude any different interpretation.

When an indefeasible title in fee simple is used in the act it means nothing more than the result of the person asserting title to effectually prosecute his or her claim therefor within the ten years allowed for such purpose.

Legislative power can be exerted rightfully in creating a right by limitation. It is not confined **exclusively to barring the remedy.**

In *United States vs. Chandler-Dunbar Water Power Company*, 209 U. S. 452, the court says:

“In form the statute only bars suits to annul the patent. But statutes of limitation with regard to land at least which **cannot escape from the jurisdiction** generally are held to affect the right even if in terms only directed against the **remedy.**”

**Citing:**

*Leffingwell vs. Warren*, 2 Black 599, 605  
*Charon vs. Tucker*, 144 U. S. 533.  
*Davis vs. Mills*, 194 U. S. 451, 457.

We have not discussed all of the questions presented by the record, but we believe that we have shown conclusively the right of the interveners to hold the lands specified and described in their deeds. And we believe that the case was well determined in the courts of the Territory of New Mexico, and we ask that the judgment be affirmed.

Respectfully submitted,

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Counsel for Parties.

MONTROYA AND UNKNOWN HEIRS OF VIGIL v.  
GONZALES.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF  
NEW MEXICO.

No. 204. Argued January 27, 1914.—Decided February 24, 1914.

The disposition of this court is to leave decisions of the territorial court on questions of local procedure undisturbed.

The Supreme Court of the Territory of New Mexico having construed the statute permitting intervention in partition during the pendency of the suit as allowing an intervention after the judgment for partition and report of commissioners that actual partition could not be made, but before the final action of the court on such report, this court approves that construction. *Clark v. Roller*, 199 U. S. 541.

A statute of limitations may give title.

The evident purpose of the statute of New Mexico, giving title under a deed purporting to convey a fee simple after ten years to lands included in grants by Spain, Mexico or the United States, is to ripen disseisin into title and is not unconstitutional as taking property without due process of law.

Nor does such statute deny equal protection of the law by its classification of Spanish, Mexican and United States grants; such a classification in the Territory of New Mexico is a reasonable one to prevent the evil of attempts to revive stale claims in regard to such grants.

16 New Mexico, 349, affirmed.

THE facts, which involve the title to a Spanish grant of land in New Mexico and the construction and constitutionality of a statute of limitation of the Territory, are stated in the opinion.

*Mr. Alonzo B. McMillen* for appellants.

*Mr. George S. Klock*, with whom *Mr. Neill B. Field* was on the brief, for appellees.

MR. JUSTICE HOLMES delivered the opinion of the court.

This action was begun on June 12, 1906, for the partition, among the remote heirs of Juan Gonzales, of the Alameda Land Grant, a Spanish grant of land in New Mexico, confirmed as perfect by the Court of Private Land Claims of the United States. On June 17, 1907, a judgment of partition was entered, declaring the persons named to be entitled to stated fractional undivided interests, and appointing commissioners to divide the land, or to report to the court if it could not be divided without prejudice to the owners. On July 3, 1907, the commissioners reported that partition could not be made, and before further action of the court, on July 20, 1907, the appellees asked leave to intervene in order to assert adverse interests. The application was allowed on November 20, 1907, and the questions now before this court arise between these intervenors and heirs of Gonzales.—By way of parenthesis we will dispose of a preliminary objection at this point. It was argued that the decree of partition was a final decree and that the intervention came too late; but apart from the often stated disposition of this court to leave decisions upon matters of local procedure undisturbed, *Tiaco v. Forbes*, 228 U. S. 549, 558, the right to intervene was given by statute 'during the pendency of such suit' and the decision that the suit still was pending was right. New Mex. Compiled Laws, 1897, § 3182, Acts of 1907, c. 107, sub-section 269. See further *Clark v. Roller*, 199 U. S. 541, 546.

The main questions concern the merits of the case. The greater part of the Alameda Grant it is found, has been occupied in strips, from beyond the memory of men now living. The intervenors claim such strips, most of them but a few yards wide, but extending, as they say, from the Rio Grande westward to the Ceja or ridge of Rio Puerco, a distance of some sixteen miles. They have



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no documentary evidence of a title derived from Juan Gonzales, but they and their predecessors in title have occupied the bottom lands between the Rio Grande and the foothills to the west for more than ten years under deeds purporting to convey a fee simple in the respective strips to the ridge of Rio Puerco. The eastern part has been fenced, cultivated and built upon; but from the foothills to the Ceja of Rio Puerco the land is unfenced, and by a general custom has been used mainly for the grazing of cattle by the intervenors and others claiming ownership in the grant. The title to this last-mentioned land alone is in question now, and it will be seen that if the intervenors have the title they claim, it must have been gained by the lapse of time during which they have held what they have held under the above mentioned deeds. The judgment was in their favor in the courts below. 16 New Mex. 349.

The title of the intervenors does not depend upon the ordinary statute of limitations and some considerations that might be relevant under that statute are not relevant here. The title rests upon a peculiar statute that has been in force unchanged in any particular affecting this case, it is said, since 1858. Compiled Laws, 1865, c. 73, § 1. Compiled Laws, 1897, § 2937. By this act, possession for ten years, under a deed purporting to convey a fee simple, of any lands which have been granted by Spain, Mexico or the United States, gives a title in fee to the quantity of land specified in the deed, if during the ten years no claim by suit in law or equity effectually prosecuted shall have been set up. We state the statute according to its construction by the court below, with which, again, we should be slow to interfere, *Gray v. Taylor*, 227 U. S. 51, 57, and which also seems plainly right. The intervenors therefore are brought precisely within the words of the act, and we think it unnecessary to spend time on the suggestion that the appellants equally are within it, and

therefore, on the principle of cases such as *Hunnicut v. Peyton*, 102 U. S. 333, are entitled to prevail on the strength of their older title so far as they were not actually excluded from the land. The purpose of the act is to ripen disseisin into title according to the deed under which the disseisor holds, and it is especially directed against ancient claims such as the appellants set up.

It only remains to consider whether there is anything in the Constitution of the United States to prevent the statute from doing its work. We limit our inquiry to its operation in the present case, and do not speculate as to whether other cases could be put in which the letter of some parts of the law could not be sustained. As applied to the intervenors, the statute simply enacts that possession for ten years of the front and cultivable portion of a strip under a deed carrying the whole of it back to the ridge of the Puerco, shall give title to the whole. We can see no taking of property without due process of law in this. A statute of limitation may give title. *Toltec Ranch Co. v. Cook*, 191 U. S. 532. *Davis v. Mills*, 194 U. S. 451, 456, 457. *United States v. Chandler-Dunbar Water Power Co.*, 209 U. S. 447. The disseisee has notice of the law and of the fact that he is dispossessed, and that a deed to the disseisor may purport to convey more than is fenced in. If he chooses to wait ten years without bringing suit, he is not in a position to complain of the consequences—at least, not when, as in the present case, the deeds do not purport to convey more than a reasonable man probably would have anticipated. See *Soper v. Lawrence Brothers Co.*, 201 U. S. 359, 367, 368. For we should conjecture, if it were material, that in this case the deeds under which the intervenors held were in a form that was usual and expected in that place.

The statute does not deny the equal protection of the laws, even if it should be confined to Spanish and Mexican grants. For there very well may have been grounds for

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the discrimination in the history of those grants and the greater probability of an attempt to revive stale claims, as is explained by the Supreme Court of New Mexico. There is no other matter that we think proper for reconsideration here.

*Judgment affirmed.*